UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LISA MENNINGER,

Plaintiff,

Civil Action No.
1:19-cv-11441-LTS

v.

PPD DEVELOPMENT, L.P.,

Defendant.

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 6

Monday, March 27, 2023
8:35 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufp@gmail.com

A P P E A R A N C E S

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TRIAL WITNESSES

EXHIBITS

None

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

So before we talk about -- I know you want to talk about those exhibits. I've read those; I'm ready to talk to you about it.

Before we do, I want to talk to you about the schedule a little bit, and something that I'm thinking of doing, and I want to see what you think.

So one, I've been, as you know, a little bit concerned that we're not going to finish by Friday when we promised the jury, and I'm more concerned about it than I was before, because one of the -- one or more of the jurors, on the way out Friday afternoon, said to Kellyann something like, "We're going to be done on Friday, right?" And the feeling that was, like, we really want to be done on Friday. And so that makes me think what -- or I looked over how much time we have between now and Friday, how much trial time, given each day, 9:00 to 1:00, Monday to Friday, figuring all that's trial time, plus today 2:00 to 4:00, plus tomorrow 2:00 to 4:00, minus the 15 minute break. And that leaves us a little more than 22.75 hours. So forgetting about this

three-quarters of an hour, because there could be slippage on the break, and there could be slippage here or there, so at least 22 hours.

So my thought was to say to each of you you have 11 hours and -- to present the rest of your cases, but I'm not just doing it, I'm telling you, see what you think.

Any thoughts?

MR. HANNON: That's fine on my end, Your Honor.

THE COURT: I'll tell you how you would do it, too.

Go ahead.

MS. MANDEL: It's okay with us, as well.

THE COURT: Okay. Then that's what we'll do.

And then what I'll do is when you're examining a witness, that's your time. So if you call the witness, Mr. Hannon, on direct, that runs against your 11 hours, and cross runs against your time.

Redirecting, it's you, Mr. Hannon, recross against you, Ms. Mandel, and if you recall a witness, it's just reverse. If there's -- as general matter, there haven't been many objections, and so we haven't spent a lot of time with objections at sidebar, so I don't see that -- and neither of you are the kind of lawyers who would be churning and making objections to churn through the other person's time. I only say that because I have had that experience. So if -- so that's how I would do it. And I'll keep you abreast of how

the time works, so you know where you are.

MS. MANDEL: Your Honor, just one slight -- it's not really a complication, but it's sort of a wrinkle in this is there are two deposition transcripts that are going to be presented, and at least on one of them, we've sort of jointly agreed on a --

THE COURT: I understand. A whole bunch. Why don't you, as to those two, you could propose like how to divide the total amount of time for them between the two of you and I'll allocate it that way. It seems fine.

MS. MANDEL: Thank you.

THE COURT: Okay. You want to talk about these exhibits or anything else? I guess the first question that would be helpful for me is who's proposing the exhibits and who is objecting?

MS. MANDEL: We are proposing the exhibits and he is opposing them. Mr. Hannon has objected.

THE COURT: Okay. So let's -- starting with number 48 -- so I guess let me tell you one general observation. I assume you want to examine -- all of these relate to Dr. Kessimian. Is that how you say her name?

MS. MANDEL: That's right, Your Honor. Yes.

THE COURT: So I think as a general proposition, unless there's something that you can explain to me, Mr. Hannon, I think they're all fair game for

cross-examination of her. Right?

MR. HANNON: I guess one in particular, Your Honor, there's a relevance concern here.

THE COURT: Which one?

MR. HANNON: Number 39.

THE COURT: With Dr. Kissimian's response at the top, or with --

MR. HANNON: With Dr. Kissimian's response at the top. So there's this -- there's this bit about, "I'm going to ask Chad," and that's misleading. It -- I think -- well, I don't understand what the -- what the purpose is of offering this. But I think there's a significant risk of just confusion in terms of the timeline here.

THE COURT: So I just say on that, I wouldn't rule it out right now. I hear your point, it might depend on what the question was and what she said. But as a general proposition, I don't know if she's talking to Chad St. John during this time or not. If she were having conversations, that might be relevant. But I think all of that strikes me as things that would be fair game for cross-examination, and to be asked about and say didn't you write an e-mail that said, or you could be impeached with that, or refreshed. And so the real -- and I understand your objection to be not to any of that, subject to this possible timing relevance as to that little bit, but really, that these aren't admissible as

exhibits.

MR. HANNON: Correct.

THE COURT: Okay. So with that in mind, running through them, why are they -- starting with number 48.

MR. HANNON: Well, I should -- just to clarify, Your Honor, I've been given some of the Court's other rulings, I think the only objection that I'm going to press here is just with respect to the document that I just referenced, the Exhibit Number 39.

THE COURT: Oh. Okay. And with respect to the top part, as opposed to what Dr. Menninger wrote?

MR. HANNON: Correct, yes.

THE COURT: Right. Why is that part -- so the rest you're not objecting to?

MR. HANNON: Correct.

THE COURT: So why is that part admissible, the top part on that, number 39. That's the only one at issue.

MS. MANDEL: Your Honor, Dr. Menninger, through counsel, has certainly made an issue that we've had so far of what types of communications PPD received with regard to accommodation requests, what PPD's mindset may have been in responding to those accommodation requests. And the notion of sort of where these kind of buckets came from, as Mr. Hannon refers to them, is definitely an issue in this case, and this e-mail from Dr. Kessimian absolutely goes to

sort of where the idea of those buckets came from, what Dr. Menninger's treating physician's intention was in connection with the discussion of accomodation of those buckets and all of that is very relevant. Frankly, it's sort of brought into issue by the plaintiff in this case.

THE COURT: Who's Patrick?

MR. HANNON: I'm sorry?

THE COURT: Who's Patrick?

MR. HANNON: That's me.

THE COURT: Right. Of course. Sorry. All right.

MR. HANNON: That's why it's misleading is because this has nothing to do with the buckets. The buckets, as we've seen, come from a whole separate e-mail chain between Chad St. John, Mr. Mekerri, and Dr. Menninger.

THE COURT: What's the date of the buckets e-mail? February 6th?

MR. HANNON: I believe it's February 6th. Yeah.

THE COURT: And did she ever have any -- as far as you know, Ms. Mandel, did she have any communications with Chad St. John directly?

MS. MANDEL: Dr. Kessimian?

THE COURT: Yeah.

MS. MANDEL: Yeah. In fact, there are some exhibits that are already admitted in the case from January 31st, February 14th. Those are communications that

did go directly from Dr. Kessimian to Chad St. John.

THE COURT: The ones we've seen. But did she have any phone calls with them?

MS. MANDEL: I believe there was one phone communication in this time period, as well, and this e-mail is sort of right in that timeline.

THE COURT: I guess I'd say the real issue is relevance here. I am just not sure until I hear her testimony. It doesn't strike me -- I'm missing the deep significance of the document, either way, and it doesn't strike me as -- there may be more significance to it than I perceive, but -- you certainly can ask about communications with Chad St. John and what she -- you know, I think that's fair to discuss on examination. Whether it's --

What you're really saying is it's not relevant, Mr. Hannon, and if it is relevant, I should keep it under 403, because it is too confusing. And the confusion goes to -- the defendant wants to use it to say it is the source of the buckets, and you say, well, it's too confusing. I can't -- like she's in the mix on the buckets, because she's sent the document that we've all seen on January 31st and then -- and responded to the bucket's e-mail. Whether that's -- and whether that's it, in the source of the buckets, whatever that means, came from an effort by PPD to drill down or whether there was some further communication or

what the significance of that is, I don't know. I think I'd have to just hear the testimony and see.

MR. HANNON: I think you're right, because I think there's sort of a necessary sort of predicate to make this relevant, which would be that after that -- she reached out to Chad St. John subsequent to this e-mail, and you're not going to hear any evidence of that, is my expectation. But obviously, if you did hear that evidence, then I would agree this would become relevant, because this would be reflective of what that conversation was about.

MS. MANDEL: Your Honor, the other question that has come up repeatedly over the last week is whether Dr. Menninger was able to do essential functions of her job, by communicating that she was able to do essential functions, and this e-mail also indicates that he treating physician said we're seeking for her to work 100 percent remotely, which is, you know, sort of yet another question in this case, was that sought, would that have been reasonable, and this e-mail goes directly to that point, as well.

THE COURT: What about that?

MR. HANNON: It doesn't. That request was never actually made. What matters are the requests that were actually made to that.

THE COURT: And her state of mind is not relevant, right?

MR. HANNON: Dr. Kissimian's?

THE COURT: That's correct.

MR. HANNON: Yeah.

MS. MANDEL: Your Honor, we've had testimony and we'll have more testimony about the company's, frankly, state of confusion, about what was being asked for and whether it was something that they could meet. And the treating physician's state of mind in writing the accomodation requests that were submitted to the company on February 14th is absolutely relevant and should be considered by the jury in trying to understand what the -- whether the company's response --

THE COURT: Why isn't it relevant to Dr. Menninger's state of mind that her psychiatrist said, "We're seeking 100 percent remote"?

MR. HANNON: To show what about her state of mind, though.

THE COURT: To show that -- what about her state of mind, Ms. Mandel?

MS. MANDEL: Again, the company -- we have a company witness, we'll have more company witnesses talk about the sort of confusion about what she was seeking and whether it was something that the company could do. And this e-mail here shows that the communications between Dr. Menninger and the treating psychiatrist helped establish what that state of

mind was for both of them, but what they were actually seeking.

THE COURT: I'll think about that.

And the rest you can admit because they're not objected to and so they're admissible without objection. And number 39, I'll just decide this when it comes up. We'll see what the testimony is.

Anything else?

MR. HANNON: Nothing here.

MS. MANDEL: No. Thank you.

THE COURT: Okay. Well, that was easy. Four of five.

All right. Then we'll -- and today, who are the witnesses today? We have Ms. Ballweg still on the witness stand?

MR. HANNON: Yeah, we'll finish here.

THE COURT: I can't remember. You're examining? You're doing your redirect.

MR. HANNON: Redirect.

THE COURT: All right. How much longer do you think you have with her?

MR. HANNON: Um --

THE COURT: You don't have to precise it down to know --

MR. HANNON: I know. I'm going to say something in

the 20-miinute range.

THE COURT: Okay.

MR. HANNON: But as quick as possible.

THE COURT: Yeah.

MR. HANNON: And then our next witness is going to be Dr. Kessimian.

THE COURT: And do you expect much recross?

MS. MANDEL: It's likely something similar. It's a little hard to tell until we see --

THE COURT: Okay.

And then, I'm sorry, after that, Mr. Hannon?

MR. HANNON: Dr. Kessimian. And then we have Dr. Summergrad.

THE COURT: Okay. All right. And that will take us the rest of the day?

MR. HANNON: Yes.

THE COURT: Okay. And then after that, you have -- who do we have tomorrow, or after them?

MR. HANNON: Tomorrow will be a number of PPD folks, kind of depending upon who's available when.

THE COURT: Who are the PPD folks who are coming, putting aside whether they can come tomorrow.

MS. MANDEL: The ones who can be available, in town, and available tomorrow, are Chad St. John and Christopher Fikry.

THE COURT: Okay. So we have those two. Other witnesses coming are -- and then the other, Dr. Kelly, the two damage experts, and the two depositions, Mason Menninger and Hacene Mekerri. Anyone else?

MS. MANDEL: Well, on Wednesday, we'll have two additional PPD witnesses here, that's Christopher Clendening and Brent McKinnon, although I should have said in the opposite order, because Brent McKinnon has a little bit of a tighter travel schedule.

THE COURT: Okay. And any other witnesses in total? I'm just thinking about --

MR. HANNON: I think we've covered all of them.

THE COURT: Okay. Two quick, legal questions, since I have you. One is, Ms. Mandel, do you agree that if a person is disabled -- I'm just thinking about the jury instructions. It's an issue that I've been thinking about -- the person is disabled and the person can do their job -- let's say there's two essential functions to their job, (a) and (b), and they can do those two essential functions without an accommodation, but they do request an accommodation, nonetheless, because it would, in Mr. Hannon's words, reduce the difficulties of the stress of doing the job. And they want to -- and the accommodation is otherwise reasonable, and there's no undue burden, just assume all of that. Is it then the company's obligation to provide that

accommodation? And the reason I'm thinking about this, I'm -- I'm thinking of explaining, and it's not a central feature of the instructions, but it is part of the instructions, that principle, and I wasn't sure where you stood on that.

And you're not -- like you have all of your rights later to object, I'm just trying to figure it out now. That's why I'm bringing it up.

MS. MANDEL: In a very general sense that -- I would say yes, in a very general sense. But I think the nuance points are really important, right, like the weighing of an undue burden on the employer, if it's a situation where the employee is saying I can do all of the essential functions of my job without the accommodation. I think -- I'd have to think more about that nuanced piece.

THE COURT: Okay. All right. And Mr. Mekerri no longer works for PPD or Thermo Fisher?

MS. MANDEL: That's right.

THE COURT: Okay. And do you, Mr. Hannon, have a view on the -- it's not exactly a missing witness instruction, but it's a cousin of a missing witness instruction that they requested?

MR. HANNON: Yeah, there's no basis for that.

THE COURT: Okay. Okay. No basis in law or no basis in fact?

MR. HANNON: Both.

THE COURT: Okay. Why?

MR. HANNON: We'll start with the fact. I'm not good with geography, but I think he lives thousands of miles away.

THE COURT: That would be fair. Oregon. I think the record would establish right now that -- or a reasonable inference from the record. I'm not sure it's expressly stated, but I think the understanding of everyone in the courtroom is that he lives in Oregon with your client and their daughter.

MR. HANNON: Correct. And obviously, Dr. Menninger's here, he's there with their minor child. So drawing any kind of an inference from the fact that he hasn't traveled across the country to testify because there's some concern that he's going to say something bad isn't a supportable inference. Further, if he had something bad to say, they would have discovered it at his deposition. They had a full and fair opportunity to question him, to elicit any evidence, helpful or unhelpful. So this is not the kind of witness that a missing witness instruction or anything in that family is appropriate.

THE COURT: Okay. And what do you say?

MS. MANDEL: Mr. Mekerri is within the continental United States and certainly had an opportunity to travel

here, to be here, the same way that Dr. Menninger's sister was here. I think that it's -- it is at least conceivable that the fact that Mr. Menninger did not travel here indicates something about an unwillingness to be here.

THE COURT: Well, one thing is sure, it says something. Right? I think if you asked Dr. Kessimian whether actions or inactions all mean something, sometimes a cigar is just a cigar, but it's always something. And sometimes a no is just no, but sometimes a no is not a no. So it means something, that's for sure. Whether it means something that's supports an inference is a different question, whether I should instruct them is still a different question. I have no doubt it means something. I'm not -- even Mr. Hannon is conceding in his argument that it means something. Right? You're saying that it likely means something else.

MR. HANNON: It means he's afraid to fly.

THE COURT: It could mean that. That's a different inference. Right? That's a different conclusion, as opposed to he's there because they have a minor daughter, but it means something. I'm not saying that it means anything that's relevant.

MR. HANNON: And if they want to question him, we can put him on Zoom. I mean, he's not afraid to Zoom. It's not -- it's not an issue of him having anything bad to say,

it's a matter of him living thousands of miles away, and the logistics of all of that.

THE COURT: I see. So even though he's not subject to subpoena power, he would consent to Zoom testimony.

MR. HANNON: Absolutely.

THE COURT: Okay. All right. Well, that's helpful.

Is there anything else that you want to say about that, Ms. Mandel?

MS. MANDEL: Not at this time, thank you.

THE COURT: Okay. I'll just think about that and we'll see.

All right. Why don't you -- we'll just -- I'm going to stay here, but we'll stand in recess. And we should have Ms. Ballweg on the stand. You should get your client, so we're ready to go.

(Court in recess at 8:55 a.m.

and reconvened at 9:01 a.m.)

(The jury enters the courtroom.)

THE COURT: Good morning, ladies and gentlemen. I hope you all had a nice weekend. Nobody discussed the case among yourselves, discussed it with anyone else, or did any independent research? Great.

So just before we get started, I know one or more of you had a question about the schedule for Ms. Belmont

Friday afternoon after you were leaving. So, yes, you will receive this case no later than Friday afternoon for deliberations. Okay. So -- and the schedule will be 9:00 to 1:00 today, 2:00 to 4:00 today, same tomorrow, back to 9:00 to 1:00, Wednesday and Thursday, Friday, 9:00 to 1:00, we'll take a break for lunch and we'll -- you'll get the case sometime in the afternoon. I can't promise it will be at 2 o'clock, but you'll receive the case for deliberations before 5:00 on Friday.

All right. Go ahead, Mr. Hannon.

MR. HANNON: Thank you, Your Honor.

DEBORAH BALLWEG

having been previously duly sworn, testified as follows:

REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF, Continued

BY MR. HANNON:

Q. Good morning, Ms. Ballweg. I'd like to begin by showing you Joint Exhibit 450.

So Ms. Ballweg, this was a document that we looked at last week, correct?

A. Yes.

Q. And the first page here, this was a typed up copy of your notes from your conversations with Dr. Menninger; is that right?

A. Yes.

Q. Okay. The actual handwritten notes, you destroyed those;

is that correct?
A. No, I did not.
Q. Okay. You still have those?
A. Yes, I do.
Q. Okay. Do you have them here with you?
A. No.
Q. Do you know where they are right now?
A. They're in my desk in Middleton, Wisconsin.
Q. Did you review them prior to testifying in this matter?
A. No.
Q. Why not?
A. I reviewed this document.
Q. Okay. So you believe that this document as a comprehensive statement of the information that you learned from Dr. Menninger in your investigation?
A. Yes.
Q. Let's look at the second page. Here, the seventh item. This concerns the events at the February 28, 2018, meeting, right?
A. Yes.
Q. Okay. That's all Dr. Menninger said?
A. No.
Q. And, in fact, part of what Dr. Menninger told you is that when she was at that February 28, 2018, meeting, that Mr. St. John and Mr. Mekerri, they weren't interested in talking

about her request for accommodations, right?

A. No, that's not accurate.

Q. She told you that all they wanted to talk about was her separation from the company, right?

A. Dr. Menninger indicated they were discussing accommodations, but they didn't receive any resolution.

Q. Well, she told you that Mr. Mekerri said that there were not going to be any accommodations with respect to buckets two through four, correct?

A. Correct.

Q. She told you that when she asked Mr. Mekerri for more information regarding buckets two through four, he said he wasn't going to provide it, right?

A. I wasn't in that conversation.

Q. I didn't ask what happened in the conversation. I asked what Dr. Menninger told you about the conversation. She told you that when she asked for more information regarding the items in buckets two through four, that Mr. Mekerri refused to tell her, correct?

A. I don't recall the exact way that she described it.

Q. Okay. Is that substantively what she told you?

A. She indicated that during the discussion, an exit package or a consulting role was offered to Dr. Menninger.

Q. And she said no, I don't want that. I want my job. Right?

A. I was not part of the conversation. I don't know what was discussed.

Q. You didn't ask Dr. Menninger?

A. It was implied that she wanted to keep her job and we were working towards resolution around what accommodations she needed.

Q. And during that meeting, she told you that she had asked for more information concerning the items in buckets two through four. Yes?

A. I don't recall if that's exactly how she stated it.

Q. But substantively, that's what she told you, right?

A. The way I recall the conversation is that Dr. Menninger was meeting with Chad and her boss to talk about accommodation requests. During the conversation, there was a point where there was no resolution, that Lisa -- that Dr. Menninger was asking what if I can't do my job, what if I can't do my job, and that's when Chad said, "Well, hypothetically, we can look at an exit package or a consulting arrangement."

Q. That wasn't my question. My question is about Dr. Menninger's request for more information about the items in buckets two through four. Did Dr. Menninger tell you that at the February 28, 2008 meeting, she asked for that information?

A. I don't recall.

Q. Okay. Let's look at what Mr. St. John told you. I'm going to show you Joint Exhibit 257.

MS. MANDEL: Excuse me a second here.

Excuse me. Joint Exhibit 87.

BY MR. HANNON:

Q. So Ms. Ballweg, this is one of the e-mails that we looked at on the first day of your testimony. Do you recall this?

A. Yes.

Q. This is the e-mail that Mr. St. John sent you on March 7, 2018, that contained that packet of info to send to PPD's lawyer; is that right?

A. Yes.

Q. Okay. And this was just over a week after that February 28th meeting had taken place, correct?

A. Yes.

Q. I'm showing you here the second to last page of the exhibit. And you see here, Mr. St. John provided a timeline of events; is that right?

A. Yes, it appears so.

Q. Okay. And you see here, Mr. St. John, he confirmed there that Dr. Menninger had requested more information listed out within the number two through four buckets, right?

A. Yes.

Q. Okay. And you know that Mr. St. John and Mr. Mekerri, they refused to provide that, right?

A. It appears Hacene said that he provided sufficient detail.

Q. And they weren't going to answer anymore questions, right?

A. Well, I think they would have answered more questions, but there would be no more accommodations made outside of items of one and five.

Q. But specifically her request for additional information about buckets two through four, they weren't going to provide that, right?

A. I believe he felt he provided sufficient detail.

Q. Okay. Well, you also knew from Mr. St. John that they didn't want to provide that information, right?

A. Well, I don't want to speak for Mr. St. John, but the process was iterative. So it was a discussion about what accommodations does Dr. Menninger need, and then if there was more information from her physician, there would be additional discussions around what other accommodations could be provided.

Q. Well, let's let Mr. St. John speak for himself then. Let's turn to the next page.

Excuse me. Back up to the page before. This is page 17 of the 19-page document. You see here, we have -- this is the draft e-mail response that Mr. St. John had written, right?

A. I believe so, yes.

Q. Okay. And he notes in there, "Adding additional detail would only present the opportunity to select items in each bucket you believe you can or can't do."

Do you see that?

A. Yes.

Q. That was the entire point of the interactive process, wasn't it? To figure out what she could and couldn't do?

A. No.

Q. Going back to your report here -- so again, this is joint Exhibit 450. I'll back up to the first page here. So part of this document reflects your conversation with Dr. Menninger on May 2, 2018, right?

A. Yes.

Q. And some of it reflects a follow-up conversation you had with her on May 15th, right?

A. Yes.

Q. Okay. And it looks like for some of these items, you had some follow-up questions for her on May 15th, right?

A. Correct.

Q. You didn't have any follow-up questions for her regarding what happened at that February 28th meeting, did you?

A. Because Chad confirmed, he was the one who indicated that he discussed the exit package or consulting, not Hacene. So no follow-up questions were needed.

Q. So you had no follow-up questions for Dr. Menninger; is that right?

A. Dr. Menninger was indicating that she was feeling harassed by her manager, and in looking at this particular situation, Chad St. John indicated he was the one who mentioned it during that meeting on February 28th.

Q. Well, let's talk about that in terms of what Dr. Menninger's complaints were about. I'm going to show you Joint Exhibit 257.

And if we look in the middle of the page, this is where you tell Mr. St. John that you're going to be following up with a formal investigation, right?

A. Correct.

Q. Okay. And that follow-up with a formal investigation, that's in response to the e-mail he had forwarded you on April 28th?

A. I don't recall the date, but yes, it was an e-mail from Chad.

Q. Okay. And that's the e-mail down below that we see here, right?

A. I just see the FYI. I don't see the --

Q. Okay. Yeah, let's turn to the next page. Let's see what the e-mail actually was here.

So this reflects, at the top here, an e-mail from Dr. Menninger, right?

A. Yes.

Q. Okay. And she has some complaints regarding Mr. Mekerri?

A. Correct.

Q. Okay. And below, you see here there's also an e-mail from Dr. Menninger to Chad St. John; is that right?

A. Yes.

Q. Okay. And in that e-mail, she has some complaints about Mr. St. John, doesn't she?

A. About Chad or Hacene?

Q. About Mr. St. John.

A. Specifically -- is that a question? I'm sorry, what was the question?

Q. The question was whether or not Dr. Menninger had complaints about Mr. St. John.

A. She felt like he was twisting her doctor's words and refusing to answer her questions. Yes.

Q. Did you investigate that?

A. No.

Q. Because you knew it was true, right?

A. It wasn't -- I wasn't part of the conversation. I had no opinion either way.

Q. Going back to Joint Exhibit 450. So you -- you identified a number of issues that you were looking into; is that right?

A. Yes.

Q. Okay. And as you said, you've excluded any complaints that Dr. Menninger had with respect to Mr. St. John, right?

A. Yes.

Q. Okay. And with respect to the first issues, first issue listed here, Dr. Menninger had complained that she was being subjected to increased scrutiny by Mr. Mekerri; is that right?

A. From a quality perspective, yes.

Q. Okay. Well, she was saying that he was being very accusatory, right?

A. Specifically around some quality issues that were occurring in the lab, yes.

Q. That his tone had changed, right?

A. Yes.

Q. That it felt like he was going out of his way to document her performance; is that right?

A. Yes.

Q. She complained that the goals he was creating were impossible to meet.

A. Yes.

Q. Okay. You didn't investigate any of those things, did you?

A. I would have asked questions of Brent McKinnon about the tone of Hacene's interaction with his leadership team, with Chad. I did ask about that, yes.

Q. Well, you didn't go back and ask Mr. Mekerri if these allegations were true, did you?

A. I asked Mr. Mekerri, during our discussion, why would Dr. Menninger feel this way? What would have created this? Did he, in any way, change his behavior or his interactive style with Dr. Menninger?

Q. And it's your contention that that question is reflected in your notes of your conversation with Mr. Mekerri?

A. No.

Q. So this right here, the items that is pointed to, those were issues raised by Dr. Menninger on 5/15, right?

A. Yes.

Q. After 5/15, you did not go back and re-interview Mr. Mekerri, did you?

A. It was awhile ago. I don't recall.

Q. Well, if you had, there would be a note in this exhibit reflecting that interview, right?

A. Possibly, yes.

Q. Okay. And if there's no note reflected in an interview of Mr. Mekerri after 5/15, it would be fair to assume that interview didn't happen?

A. Or the data -- yes. Probably.

Q. Now, you -- you knew as of this date that Mr. Mekerri was making efforts to create a document trail of alleged performance concerns with Dr. Menninger, right?

A. I believe there were some performance issues that Hacene was attempting to address with Dr. Menninger at the time, yes.

Q. He was being coached to document performance concerns, yes?

A. All managers are coached to document concerns.

Q. Well, before Dr. Menninger disclosed her disability, you hadn't been coaching him to document performance concerns about her, had you?

A. I wasn't coaching Hacene at all.

Q. Not at all.

Let's take a look at Joint Exhibit 126. This is an e-mail exchange between yourself and Mr. St. John on April 17, 2018?

A. Yes.

Q. And just to look at the second page -- well, actually, strike that.

Let's look at the middle of the first page. You wrote, "Ask Hacene/draft response to be very specific about how she didn't meet expectations."

Do you see that?

A. Yes.

Q. Those are your words. Yes?

A. Yes.

Q. The "she" you're referring to there is Dr. Menninger?

A. Yes. And Chad is helping --

Q. You've answered my question. Thank you.

Ms. Ballweg, did you find your interview of Dr. Menninger painful?

A. I'm sorry, what was the word? Painful?

Q. Painful, yeah.

A. No.

Q. I show you now Joint Exhibit 244. It's an e-mail from you to Chad St. John on May 16, 2018, yes?

A. Yes.

Q. You write in the second sentence, "I had a 'painful' follow-up with her yesterday." Do you see that?

A. I do.

Q. That refers to your follow-up interview with Dr. Menninger on May 15th, doesn't it?

A. I was concerned about giving Dr. Menninger the feedback. It was painful to me to have to go back and have a conversation knowing that it wasn't the outcome that she had intended.

Q. Back to my question, this refers to your May 15th conversation with Dr. Menninger; is that right?

A. Yes.

Q. You hadn't reached any findings as of May 15th, had you?

A. That's correct.

Q. Okay. So the painfulness here, this wasn't a matter of

telling Dr. Menninger she was wrong, was it?

A. No. This was a follow-up, asking questions, after having talked with other folks about the issues that she had raised.

Q. And I now show you Joint Exhibit 301. You have here an e-mail exchange between Mr. Mekerri and Dr. Menninger, on April 25, 2018. Do you see it?

A. Yes.

Q. So this was some of the -- the back and forth that we looked at previously, concerning his request that she adopt her goals. Right?

A. Yes.

Q. Okay. And during that correspondence, he offered certain criticisms of her handling of recent lab issues; is that right?

A. Yes.

Q. Okay. And during the course of this back and forth, Dr. Menninger, she provided rebuttals to those criticisms, right?

A. She did, yes.

Q. Okay. And in the course of your investigation, you never determined whether or not Dr. Menninger's rebuttals of those accusations were correct, did you?

A. I was looking at the treatment of her manager towards her before she disclosed her disability and after, and the errors that were indicated occurred before and after she disclosed

her disability.

Q. Okay.

A. That was what I was looking into.

Q. My question is a little bit different. Did you investigate as to whether or not Dr. Menninger's rebuttals, where she pointed out why the criticism she was facing wasn't factual, was or was not accurate?

A. In my opinion, investigating that didn't -- I investigated whether there were error rates, more or less, and if her manager was treating her differently.

Q. Right. But error rates don't tell the whole story, right?

A. But Dr. Menninger was asking for, you know, her manager -- or was indicating her manager was treating her differently before she disclosed her disability, versus after, based on the quality of the laboratory. The quality of the laboratory was -- the quality was decreasing.

Q. Back to my question, though. In terms of Dr. Menninger's rebuttals, where she pointed out why the criticism wasn't factual, did you investigate whether or not Dr. Menninger's rebuttals were correct?

A. There probably was some discussion with Brent McKinnon about some of the information in there. But did I specifically one by one? No.

Q. Well, here, let's look at it this way. Let's start with

Joint Exhibit Number 313. So you see here, this is an April 17th e-mail from Dr. Menninger, where she goes on, and she rebuts some of these criticisms, right?

A. Yes.

Q. Okay. And at your deposition -- well, let's do it this way. If you can open up the binder in front of you to the first tab, please.

And that's the cover of your deposition transcript, yes?

A. Yes.

Q. And if you turn to page 179, line 24. Are you there?

A. Yes.

Q. Please read along silently as I read aloud.

"QUESTION: My question was whether or not anything that Dr. Menninger wrote in the April 17, 2018, -mail to Mr. Mekerri was wrong.

"ANSWER: I didn't evaluate this issue to that level. I am not a technical person. This would be for the quality department to really investigate. I can't dispute if it's true or not true."

Did I read that right?

A. Yes.

Q. Going back to your interview notes. So again, we have a Joint Exhibit Number 450. With respect to item 2 here on this first page, you did find in your investigation, didn't

you, that it was Mr. Mekerri who had decided to exclude Dr. Menninger from the interview process?

A. Because of the December -- or November discussion where Dr. Menninger felt overwhelmed, Hacene was taking over and helping her, by assuming some of these responsibilities.

Q. Well, my question specifically relates to interviews, that it was Mr. Mekerri who decided not to have Dr. Menninger involved in these interviews; is that right?

A. Again, because he was helping her in the process. He was conducting the interviews on her behalf.

Q. Item number 3 here relates to "new expectation to attend bid defense and client visits." Do you see that there?

A. Yes.

Q. Fair to say that you learned in your investigation that Dr. Menninger had never previously attended bid defenses; is that right?

A. Yes.

Q. You also learned that she had not previously been directly involved in doing client visits as part of the sales process, correct?

A. I believe she had been involved with client visits.

Q. That she had actually gone out and visited clients as part of the sales process?

A. No, but had been available as a consult during that process.

Q. Okay. Great. That's what she had done historically, but you agree that she was being asked to do something different now, right?

A. Accountability of her job, but something that she hadn't done historically.

Q. Okay. Something historically she hadn't been asked to do, right?

A. That's fair.

Q. Okay. But then with respect to item 4, Dr. Menninger pointed out to you that she wasn't being invited to certain sales and marketing meetings; is that right?

A. Yes. A routine marketing meeting.

Q. And she pointed out to you that seemed odd, right?

A. Yeah, just why wasn't she invited to that particular meeting.

Q. Especially if all of the sudden there was this claimed need to have her directly involved in sales, right?

A. Yes.

Q. And when you went and you actually spoke to the business development folks, right?

A. Correct.

Q. Andy Supp?

A. Yes.

Q. Head of business development?

A. Yes.

Q. And he told you that he didn't need Dr. Menninger directly involved in those meetings, right?
A. No. Andy confirmed that there was a member of Dr. Menninger's team on his routine marketing log calls.
Q. And he cold you that he was perfectly satisfied with that, right?
A. I don't think he was satisfied or unsatisfied. He said there's a representative. I'm assuming that they're talking. If they're not, then, you know, I'm happy to add Dr. Menninger.
Q. But he didn't indicate that having Dr. Menninger there was a significant need, right?
A. Again, I don't think Andy had an opinion one way or the other. He said there's a representative from the lab. If it needs to be Dr. Menninger, then, you know, she can attend. But he vetted the list to make sure there wasn't, you know, a large -- too large of a group of folks at that meeting.
Q. Now, let's look at the next page here, item number 6. And this related to Dr. Menninger's 2017 performance review. Right?
A. Yes.
Q. One of the things Dr. Menninger pointed out to you was that it was odd that there wasn't much commentary in the review, right?
A. Yes.

Q. Okay. And she was right that there wasn't much commentary in the review, right?

A. That's correct.

Q. Okay? In fact, there were various spots where Mr. Mekerri had not written anything, right?

A. Yes.

Q. And, in fact, there was one spot where it looked like he stopped mid sentence, right?

A. Yes.

Q. Okay. So she was right about that, correct?

A. Well, when I think about a performance review, the end of the year is when it's, you know, officially completed, but the performance review occurs throughout the entire year, one on one conversations, discussions. It's an accumulation of what you're discussing with that individual through the year. So the end of the year is really just to finalize a full year of discussion.

Q. I'm not sure I understand that answer. My question is whether or not she was right that there was information -- I'm sorry, that if she was right that there was not much commentary, and she was, wasn't she?

A. Correct.

Q. Okay. And she also noted that Mr. Mekerri had never actually gone through his ratings with her and explained why he had those ratings, correct?

A. Correct.
Q. And that was true, as well, wasn't it?
A. As with other employees that reported to him, yes.
Q. Okay. Now, before doing any investigation here, you already had some personal knowledge concerning Dr. Menninger's 2017 review, didn't you?
A. In terms of forwarding it to completion, yes.
Q. The day after Dr. Menninger disclosed her disability, you advanced her performance review in the system, didn't you?
A. And many others, yes.
Q. To your knowledge, did Mr. St. John thereafter go in and modify the review?
A. No.
Q. Would it surprise you if he did?
A. No -- I mean, yes, it would surprise me if he -- the way the system works is, when you advance it, it does not allow for edits once it is to a completed form.
Q. Let's turn to the next page here in this document. These are your notes of your conversation with Mr. St. John; is that right?
A. Yes.
Q. Okay. And one of the things that he -- you asked him about was whether or not Mr. Mekerri was treating Dr. Menninger any differently; is that right?
A. Yes.

Q. Okay. And Mr. St. John, did he say anything to you about the coaching he had been providing to Mr. Mekerri about documenting performance deficiencies of Dr. Menninger?

A. When we went through these specific issues, no. But through our one-on-ones, I would have been aware of that.

Q. You already knew that he was coaching Mr. Mekerri to provide tough feedback to Dr. Menninger, right?

A. Coaching, yes.

Q. Tough feedback, right?

A. Feedback.

Q. You already knew that there was an effort to turn up the heat on Dr. Menninger, didn't you?

A. Again, looking at her disability and her accommodation requests separately from performance, it -- that was the intent, to segregate the two, to ensure that we kept them segregated.

Q. Let's turn to the next page here of your interview notes with Mr. St. John. So this -- this is what you wrote down in terms of the version of events from the February 28th meeting that Mr. St. John relayed to you in the course of your information; is that correct?

A. That's correct.

Q. Did I hear you correctly that, when being questioned by PPD's lawyers, that you heard three different versions of what happened at the February 28th meeting?

A. Yes.

Q. Okay. You heard Dr. Menninger's version, right?

A. Yes.

Q. There's this version from Mr. St. John, right?

A. Yes.

Q. And then you heard a different version from Mr. Mekerri, right?

A. Yes.

Q. Did that indicate to you, Ms. Ballweg, that somebody was lying?

A. I think lying is a strong word. I think it was a -- it was a tense meeting. It was unproductive. Recollections were apparently different.

Q. And it never occurred to you that maybe those different recollections were the result of someone being dishonest?

A. No. For what purpose? I'm not sure why anyone would be dishonest in relaying -- and again, when we do the investigation, it's -- we really impel employees and managers to be direct and honest about what happened in that meeting.

Q. Wasn't Mr. St. John direct and honest to you back in March, when he drafted those documents for in-house counsel?

A. Chad was providing information. We're a high -- PPD is a high performing organization. There's initiatives where we spend time and energy investigating and providing information, but they don't all -- they're not all executed.

Q. Why is there nothing in here in these notes of your conversation with Mr. St. John about Dr. Menninger asking for additional detail concerning buckets two through four?

A. I don't believe Chad and I discussed it.

Q. Why is there nothing in this note here about Mr. Mekerri telling Dr. Menninger that there weren't going to be any accommodations for buckets two through four?

A. That had already been communicated to Dr. Menninger.

Q. And Mr. St. John, he didn't mention that when you interviewed him?

A. No.

Q. I'm going to turn your attention to the page in this exhibit. In the bottom right corner, it has 332. And if you look here, these are what you say are your notes with your interview with Mr. McKinnon; is that right?

A. Yes.

Q. Okay. You described these as notes. Your discussion with Mr. McKinnon was about an hour to an hour and 15 minutes, right?

A. Yes.

Q. Okay. And in terms of what you wrote down from that, it's just this one page; is that correct?

A. Yes.

Q. During the course of this interview, Mr. McKinnon didn't tell you that Dr. Menninger was performing poorly, did he?

A. Brent wouldn't have been in a position to make that observation.

Q. So he didn't, right?

A. It wasn't relevant to the investigation.

Q. That's fine. I'm just asking if he communicated that to you that there were problems with Dr. Menninger's performance. And he didn't, did he?

A. I wouldn't say performance. I think he made a comment about leadership and feeling that the team, perhaps, lacked some leadership from a quality perspective.

Q. Well, you said the other day that he was making comments regarding the various groups overseeing the lab, right?

A. I'm sorry. What was your question?

Q. Sure. His quality comments, those weren't specific to only Dr. Menninger, right?

A. Correct.

Q. He was saying that there were lots of areas for improvement, right?

A. Correct.

Q. Okay. He didn't indicate to you that any of the recent lab problems had been attributable to anything that Dr. Menninger had or had not done, did he?

A. Well, he recognizes that quality issues occur within the lab. It's, again, oversight by the leadership team that really needs to be engaged and aware and overarching

providing guidance and counsel to the team. That was his comments.

Q. And you had seen from Dr. Menninger's e-mail exchange from Mr. Mekerri, all the different things she was doing in that regard, right?

A. Yes.

Q. That she was providing oversight of the team?

A. That's her statement, yes.

Q. That she was making sure these things were properly investigated?

A. That's -- yes, that's what she said.

Q. That she was doing all the things she was supposed to be doing, right?

A. That's what she asserted, yes.

Q. And you never found that to be false, did you?

A. I didn't look into those.

Q. Looking here at the bottom of the page, do you see here that Mr. McKinnon, he did note one specific problem relating to the reporting structure for Narine -- I'm not even going to try to pronounce that last name, but do you see that there?

A. Yes.

Q. Now, that was an issue that you were familiar with, right?

A. Cursory.

Q. Well, you had been involved in the decision to have Narine report directly to Mr. Mekerri, weren't you?

A. I suppose Chad would have made me aware along the way, sure.

Q. Well, you and Mr. St. John had actually met to discuss how to explain that decision to Dr. Menninger, right?

A. I don't recall.

Q. I'll show you Joint Exhibit 154.

You see an e-mail there from Mr. St. John to Mr. Mekerri, copying you?

A. Yes.

Q. Okay. He begins it by saying, "I spoke with Deb." Yes?

A. Yes.

Q. That's you?

A. Yes.

Q. Okay. And then he goes on to describe the reporting relationship for Narine, right?

A. Yes.

Q. Okay. And then he provides some talking points in terms of how to justify this to Dr. Menninger, right?

A. I don't think justify, but communicate.

Q. Who was Dr. Menninger's replacement?

A. Dr. Basel Kashlan.

Q. Do you recall when PPD first began recruiting Dr. Kashlan?

A. I wasn't involved in that. I'm -- I'm not aware.

Q. I'll show you Joint Exhibit 231. I'm showing you here an e-mail exchange between you and Mr. Williams. Again, Mr. Williams, that was your boss back at the time; is that right?

A. Yes.

Q. And here in this June 4, 2018 exchange, you write to him in response to the fact that Dr. Menninger had requested that medical leave; is that right?

A. I'm not sure what I was referring to there.

Q. Okay. Well, June 4th, that was two days after Dr. Menninger had requested her medical leave. Yes?

A. Correct.

Q. Okay. And Mr. William's response includes, "How do we cover and bridge until the new guy gets on board?" Do you see that?

A. Yes.

Q. The new guy he's referring to is Dr. Kashlan, isn't it?

A. I don't know.

Q. I'll show you Joint Exhibit 106. You see this is a June 1st e-mail from Mr. St. John to Jerry Williams, copying you?

A. Yes.

Q. And you see that attachment there?

A. Yes.

Q. That's Basel Kashlan's resume, isn't it?

A. Yes.

Q. And am I right that while Dr. Menninger was on medical leave, that PPD hired him to serve as an -- in an interim position. Isn't that right?

A. I'm not sure of his employment details. I know he was a full-time employee or hired in -- I think it was June of 2019.

Q. But he started well before that, right?

A. I'm not sure what capacity, though.

Q. Well, didn't PPD hire a doctor to come in and serve as an interim replacement for Dr. Menninger?

A. I believe so.

Q. And wasn't that Dr. Kashlan?

A. Again, as Dr. Menninger commented, there was gaps in benches. I'm not quite -- I don't recall exactly who was hired when, to cover which benches.

Q. You don't know who the medical doctor was in charge of your lab?

A. There was a consultant, Miriam Black, that had been used historically, and she might have filled that gap. I just -- I'm not sure if it was Miriam or when it was Basel, or Dr. Kashlan. I just don't recall.

Q. You testified on your examination from PPD's counsel last week that you thought Dr. Menninger's decision to relocate

was concerning. Did I hear that right?

A. Yes.

Q. I'm going to show you Joint Exhibit 382.

It's an e-mail from Mr. St. John, on June 7th of 2017?

A. Yes.

Q. And Mr. St. John, he writes, "Lisa has also shared with all the CL key stakeholders that she will be moving to the Providence area/New England region for compelling personal reasons the weekend of June 24th. No concerns regarding her physical move have been expressed or detected at this time."

Do you see that?

A. Yes.

Q. I'm going to show you Joint Exhibit 401. So this is that 9-Box that we looked at on Friday. Do you recall that?

A. Yes.

Q. And just for context, this was transmitted December 20, 2017, right?

A. Yes.

Q. Okay. And as of December 2000 -- I'm sorry, December 20, 2017, am I right that Dr. Menninger's performance was right on track?

A. Yes.

Q. You were asked some -- -- I'm sorry, you read us some testimony last week concerning PPD's financial performance.

Do you know what PPD's revenue was in 2017?

A. The overall company?

Q. Yes.

A. I don't recall. It's a long while ago.

Q. Would it be in the hundreds of millions?

A. Not hundreds. I don't recall.

Q. How about 2018? Was its revenue that year in the hundreds of millions?

A. I -- I don't recall 2018.

Q. When it was acquired by Thermo Fisher, was for that $17.4 billion?

A. At the end of 2021, yes.

Q. I now show you Joint Exhibit 186.

I lied. I'm not going to show that to you.

Do you recall the testimony from Dr. Menninger's sister on Friday?

A. Yes.

Q. And do you recall, there was a text message from February 2nd, 2019, advising your sister that she no longer worked at PPD?

A. Yes.

Q. Okay. That was the day after Dr. Menninger's employment at PPD had ended. Am I right?

A. What was the date again? I'm sorry.

Q. February 2nd. She was terminated officially

February 1st, right?

A. Administratively, her status changed February 1st of 2019.

Q. So last document here. I'm going to show you Joint Exhibit 186.

So this is that e-mail exchanged we looked at a couple of times between yourself and Mr. St. John on February 28, 2018; is that right?

A. Yes.

Q. Okay. And directing your attention here to the highlighted portion, where Mr. St. John references, "Delicately working Lisa out."

Did I hear you correctly when PPD's lawyer asked you questions that you thought that was a reference to Dr. Menninger's remote working status?

A. It's -- yeah, to have coverage -- again, not knowing, with the accommodation requests, you know, just wanting to be in the position to ensure that there's coverage for the lab to conduct business.

Q. Sure. My question is not about coverage. My question is specifically about forwards. "Delicately working Lisa out."

What did you think that meant?

A. Well, these are Chad's -- this is Chad's e-mail, but again, coverage for the organization.

Q. This was more than seven months after Dr. Menninger had

gone remote, right?

A. What was the date of the e-mail again?

Q. February 28, 2018.

A. That timeline was correct, yes. So --

Q. She had been remote for a long time, right?

A. And still working on filling the gaps that she identified for the lab, yes.

MR. HANNON: That's all I have, Your Honor.

THE COURT: All right. Recross.

RECROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

BY MS. MANDEL:

Q. Good morning, Deb.

A. Good morning.

THE COURT: Go ahead. Whenever you're ready.

MS. MANDEL: Ms. Belmont, do I have -- oh, there we go.

BY MS. MANDEL:

Q. Deb, I'm pulling back up Joint Exhibit 450. Do you see that in front of you?

A. I do, yes.

Q. And these are the notes that you took in connection with your investigation?

A. Correct.

Q. And this is -- on this first page, you've listed out the first five of the concerns that you were looking into. Do I

understand that correctly?
A. That's correct.
Q. If we look down at number -- numbers 3 and number 4, do you see those?
A. Yes.
Q. As far as you understood when you were doing the investigation, were these two different issues that had been raised?
A. Yes.
Q. And can you explain, based on your understanding, what the difference was between numbers 3 and 4?
A. So bid defense and client visits. A bid defense is working with our clients to -- they're looking for a proposal of the work that we can do. And it's really defending the quality of the work we do, the project, the cost. So it's really helping either prospective clients or existing clients with new work appreciate and understand the scope of the project.

Certainly part of Dr. Menninger's job description is a key accountability.

And client visits, it's not uncommon for senior leaders of the business to attend client calls, whether traveling to their office, attending meetings while they're on site. It's done consistently across all the labs, Central Labs, and it certainly is included in that, as well, in terms

of an expectation of our senior leaders sitting on top of specifically lab based businesses. Vastly different than a marketing log call, which, the way I understand it, it's a weekly or biweekly call where they walk through heres the clients, here's the potential work that they can bring in. It's a routine meeting. Vastly different than a bid defense or a client -- a client visit.

And then the sales meeting, again, just a specific, once-a-year-meeting to bring the entire sales force together, more like team building, and what is our focus and goal for the next year, a little bit of education that goes along with it. And then for that particular year, breakout sessions to talk about what specifically do we want to focus on with three distinct labs within the organization, what specifically do we want to focus on for this year, and kind of carve out meetings, if you will, with specific people talking about their specific area within PPD. So four vastly different things.

Q. And you testified earlier that you consulted with Mr. Andy Supp about number 4; is that correct?

A. Correct.

Q. And Mr. Supp's role, again, can you just explain what that was?

A. So Andy Supp -- excuse me -- is the executive director of our business development team. He would be the one hosting

those biweekly client log meetings with his team to make sure, again, that we're following up on leads and we're having an awareness of what new clients we might want to have more discussions around.

And then the sales meeting, it was -- it's a sales meeting. So Andy was the one really coordinating the meeting, bringing his team together, and being more of the coordinator, if you will, of that particular meeting from a Central Lab perspective.

Q. And as far as you understood, Deb, did Andy Supp have any relevant knowledge with regard to Mr. Mekerri's request that Dr. Menninger attend bid defenses and client visits?

A. I'm sorry. Could you say that again?

Q. Sure. I'll ask that better.

Looking back at number 3, where Dr. Menninger had raised concerns about Mr. Mekerri's expectations that she attend bid defenses and client visits, as far as you understood, was that something that Mr. Supp would have been involved in at all?

A. Yes. Andy would be -- and his team would attend bid defenses, as well as client visits. But, again, not uncommon for technical leaders to attend in addition to our business development teams, again, to share technology, answer questions. But Andy would have been aware and involved in both client visits and bid defenses.

Q. Deb, can you tell the jury, what were your goals in doing the investigation that you performed in May of 2018?

A. Excuse me.

So whether Dr. Menninger or anybody else, the goal of an investigation is, again, meet with the individual, appreciate from their lens what it is that is, you know, troublesome, bothersome to the individual, point by point, go through and investigate, is there merit, is there anything here that doesn't look right, doesn't feel right? And as I go through the investigation, is there any other information or any other individuals who could provide documentation or knowledge in which to make a fair assessment of the situation? And the same thing with Dr. Menninger's situation. I went through point by point. You know, does there -- is there an appearance of her manager treating her differently because she disclosed her disability?

And in every one of those situations, there was not -- there just wasn't proof that he was treating her differently. It's not -- at the end of the day, you know, as leaders, we try to come to work with, you know, our game face, but, you know, there's pressures. The business was going through a struggling time. I mean, we all end up being terse at times when we don't want to be. Is that problematic? It's not nice, but it's not problematic. It's not nice. It's just not nice. But we don't know the whole

scenario of how people behave and what's going on with their personal lives.

My goal really was to say was Dr. Menninger treated differently after she disclosed her disability by her manager.

Q. And after you concluded your investigation and met with all of these witnesses, what was your conclusion in that regard?

A. That she was not treated differently after she disclosed her disability.

Q. If Dr. Menninger had raised another complaint or concern with you, would you have conducted another investigation?

A. Yes.

Q. I want to draw your attention back to Exhibit 244, which you looked at a few moments ago. And this is your e-mail from May 16th at the top. And we didn't look at the last sentence of your e-mail there, where you said, "I will give Hacene feedback, too. We'll let you to know to also co-coach him on his supervisory challenges.

Can you explain what you meant by that, Deb?

MR. HANNON: Objection. Beyond the scope.

THE COURT: Overruled.

Go ahead.

THE WITNESS: And I think I mentioned this when we talked earlier about, you know, the amount of investigations

that I've done and how, at the conclusion, there are opportunities for people to learn. And so here, you know, Hacene, in his leadership style, certainly could have been more direct, could have been more communicative, could have just, from a leadership perspective, approached the situation better. And our attempt is really to help leaders be the best that they can be, help our employees to be the best they can be. So our role is to make sure that we give that feedback, and encourage, you know, again, continuous improvement in our desire to be, you know, great leaders.

Q. And did you, in fact, provide that feedback to Mr. Mekerri?

A. I did, yes.

Q. Was that in the same time period?

A. It would have been after the conclusion of the investigation, but I did, yes.

Q. And you testified earlier about advising Mr. Mekerri to keep performance discussions separate from disability accommodation discussions. Do you recall that?

A. Yes.

Q. And would you have advised any manager in that same manner?

A. Yes, absolutely.

Q. And why is that, Deb?

A. Again, we want to make sure that employees -- that

there's a fair process with each one, and there's -- you know, and not an attempt to cross lines and confuse the situations. The more you can compartmentalize the issues, the more clear it can be to the employee, as well as the manager going through that situation.

MS. MANDEL: Okay. Thank you. I have no more questions.

THE COURT: Okay. Thank you.

You can step down, Ms. Ballweg.

Next witness.

MR. HANNON: The plaintiff calls Dr. Marianna Kessimian.

THE COURT: All right.

MR. HANNON: Your Honor, may I retrieve the binder from the witness stand?

THE COURT: Yes. Of course. Go ahead.

THE DEPUTY CLERK: And if you can remain standing and please raise your right hand.

(The witness was duly sworn.)

THE DEPUTY CLERK: Can you please state your full name and spell your last name for the record.

THE DEPUTY CLERK: Sure. Marianna Isabel Kessimian, K-e-s-s-i-m-i-a-n.

THE COURT: Go ahead, Mr. Hannon.

MR. HANNON: Sure. Thank you.

MARIANNA I. KESSIMIAN

having been duly sworn, testified as follows:

DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. HANNON:

Q. Good morning, Doctor.

A. Good morning.

Q. A little bit of advice, you'll want to pull the microphone a little bit close, and it actually works best when you speak directly into it?

A. Got it.

Q. All right. Great. Would you please introduce yourself to the jury?

A. Hi, I'm Dr. Marianna Kessimian. Nice to meet you.

Q. And Doctor, what do you do for work?

A. Oh, sure. I'm an outpatient psychiatrist.

Q. And where do you work?

A. In Providence, Rhode Island.

Q. Okay. And do you know Dr. Menninger?

A. I do.

Q. And how did you come to know Dr. Menninger?

A. She came to me as a patient.

Q. Okay. And do you know when that was?

A. I believe it was January of 2017.

Q. Okay. Well, we'll look at some notes in a second and talk about some dates.

A. Sure.
Q. But first, maybe you can talk a bit about your background. Where did you go to school?
A. I graduated medical school from BU.
Q. And when was that?
A. That was in 2007.
Q. Okay. And did you do some kind of a residency or other training afterwards?
A. Yes. I went to Brown University and I completed an adult psychiatry residency training and a child and adolescence fellowship after my adult training.
Q. And when did you complete all of that?
A. 2013, I believe.
Q. And what did you do after that?
A. For three years, I worked at the Young Adult Behavioral Health Life Span outpatient clinic, and then I transitioned to private practice in 2017.
Q. And where is your private practice?
A. It's called Hartselle and Associates, and it's in Providence, Rhode Island.
Q. Do you have any kind of particular specialty or focus?
A. I'm a generalist. I have some expertise in eating disorders in young adults, since I worked with them specifically for three years, but I see all ages and all diagnoses.

Q. Very good. Have you ever testified in court before?

A. No.

Q. Oh, and before we move on, are you being compensated in any way for your testimony today?

A. No.

Q. And, in fact, are you appearing pursuant to a subpoena?

A. I am.

Q. Okay. I'll try to make good use of your time.

So just to start here, I'm going to show you what we refer to as Joint Exhibit 18. And do you see here at the top it says, "Initial psychiatric evaluation"?

A. Oh, I had the wrong year. Yes.

Q. Okay. And it references Dr. Menninger there, right?

A. It does.

Q. Okay. Would this be the notes from your first meeting with Dr. Menninger?

A. Yes.

Q. Yes?

A. Yes.

Q. Okay. Great. And if you just give the jury a little bit of sense in terms of how you go about making notes in your typical practice?

A. Yes. So during the session, I jot down some notes, and then afterwards, I complete a thorough psychiatric documentation of the initial evaluation.

Q. Okay. And I'll direct your attention to the first section here of your note, you reference a, "Presenting complaint." Do you see that?

A. I do.

Q. Do you typically include some kind of a -- of a statement like that in your notes?

A. Typically, yes.

Q. And what does that generally include?

A. It includes what the patient kind of presented that day as their reason for seeking care.

Q. Okay. And what -- what do you recall about your first meeting with Dr. Menninger, if anything?

A. It doesn't stand out. I think it was a typical interview and first meeting. She answered all of my questions. That's really it.

Q. Okay. And this sort of description here in terms of what she said to you, the best of your knowledge, would that all accurately reflect what you and she discussed?

A. Yes.

Q. And you know here, in this paragraph that I've just highlighted, you referenced that Dr. Menninger would like to maintain her current job and responsibilities.

Do you see that?

A. I do.

Q. Okay. Do you recall if that was one of the reasons why

she had come to see you that day?

A. Could you repeat the question? Sorry.

Q. No worries. Do you recall if that was one of the reasons why she came to see you that day?

A. Because she wanted to keep her current job and responsibilities?

Q. Yes.

A. Yes.

Q. Okay. And do you recall getting involved in helping Dr. Menninger submit some paperwork for an accommodation request?

A. I do.

Q. All right. Let me show you here Joint Exhibit 47. And is this an e-mail from you to Chad St. John?

A. Yes.

Q. And that's your e-mail address?

A. It is.

Q. Okay. You begin, "Per our conversation, the forms are attached." Do you see that?

A. I do.

Q. Do you recall that conversation at all?

A. Not specifically.

Q. Okay. I just want to direct your attention to the forms that follow. So you see the next page, it's captioned --

A. Oh, yeah.

Q. -- "Request for accommodation"?

A. Uh-huh.

Q. Did you complete this form?

A. Yes.

Q. Okay. Did you complete it truthfully and honestly?

A. I hope so.

Q. Were you -- is it your practice to complete forms like this truthfully and honestly?

A. Yes.

Q. Okay. And here in Box 8, do you see there's a section regarding recommended accommodations? Do you see that?

A. Yes.

Q. Okay. And one of your recommendations here was that, "Any social of interaction or public speaking incident to her role be minimized to the extent possible."

Do you see that?

A. I do.

Q. Okay. And at the time, did you believe that that was something that would have helped Dr. Menninger?

A. I do. I did.

Q. And you also recommended that her role not be changed to require any increased public speaking or social interactions. Do you see that?

A. I do.

Q. Did you believe at the time that was something that would

help Dr. Menninger do her job?

A. Yes.

Q. And then in the next section, there's a recommendation that a plan be developed for these activities, if they're necessary, in consultation with you or another healthcare provider. Do you see that?

A. I do.

Q. Was that something else that you thought might help Dr. Menninger do her job?

A. Yes.

Q. Okay. And in terms of why those were necessary, in box number 6 here, there's a statement that, "Lisa's disability makes it extremely difficult for her to engage in public speaking and social interactions. While Lisa has been able to tolerate these types of activities to the extent that they have been necessary for --" next page.

A. Oh. Okay.

Q. "-- her job, they often caused her to suffer from anxiety and other somatic symptoms." Do you see that?

A. I do.

Q. Okay. With respect to your recommendation that social interactions be limited and public speaking be limited, was it your understanding that Dr. Menninger was incapable of doing those things?

A. No.

Q. Okay. Was it your intent to convey to PPD that she was incapable of doing those things?

A. No.

Q. During your phone call with Mr. St. John preceding this e-mail, do you recall telling him that Dr. Menninger was categorically unable to do those things?

A. No. I don't remember saying that.

Q. Do you recall at some point submitting a more specific accommodation suggestion?

A. I think I did. When I reviewed some of the e-mails, I thought I saw a form filled out, so yes.

Q. Okay. I'm going to show you Joint Exhibit 180.

A. Okay. Yup.

Q. Does this look familiar?

A. It does.

Q. Okay. And you see here at the top, it says, "Psychoeducation regarding disability and accommodation requests." Do you see that?

A. I do.

Q. Okay. What are you referring to there by "psychoeducation regarding disability"?

A. There is a lot of data to support that educating employers or teachers, organizations about mental illness and how it manifests sometimes can help them figure out within their own system how to support their employee or a student,

so on and so forth. So that's what I mean by "psychoeducation."

Q. And did you provide psychoeducation?

A. I hope so. I think I wrote a little bit about social anxiety disorder and how it can impact well-being and how it's physically also impacting Lisa. So yes.

Q. And if I just highlight this section here, would I be right that that was the sort of psychoeducation that you were trying to --

A. Yes.

Q. Did Mr. St. John or anyone else from PPD ever reach out to you to get more information concerning this psychoeducation?

A. No.

Q. Would you have provided more if they had asked for it?

A. Yes. I've gone to school systems and had meetings and so on and so forth, so yes.

Q. Okay. And when you say you've gone to school systems, you mean like in connection with an accommodation request?

A. Correct.

Q. And then below, we'll see here some recommendations you provided concerning possible accommodations?

A. Correct.

Q. Okay. And were these things that you had sort of brainstormed with Dr. Menninger in terms of, you know,

creative ideas that might be available?

A. Yes.

Q. Okay. Was it your intention to convey to PPD that Dr. Menninger would only do her job if she got these accommodations?

A. Absolutely not.

Q. Do you see here at the end, you note, "I am available for further discussion"?

A. I do.

Q. I'm going to take you back to your treatment notes, Joint Exhibit 18. Besides what's contained in these notes, do you have a sort of independent recollection of much of your care of Dr. Menninger?

A. I have an overall recollection, yes.

Q. Yeah? What's your overall recollection?

A. My overall recollection is she was very open and willing to do the work to get better, including taking medications, letting me talk to whoever I needed to talk to to help her get better. But she did start to decline and she needed more support. But in general, she was very committed to trying to get better.

Q. And in terms of that decline, do you recall what that decline led to?

A. I believe a hospitalization.

Q. And I'm going to show you your notes here from a visit on

June -- June 1, 2018. And just to orient us, the top of the highlighted section, it says, "DOS." Would that be date of service?

A. Yeah.

Q. So that generally reflects the date that you saw the person?

A. Yeah.

Q. Okay. In terms of the chief complaint that day, you write, "I just can't do it anymore. I am not sleeping, eating. I am having thoughts about ending my life, but I wouldn't do it because of Maya and Mason."

Do you see that?

A. I do.

Q. Okay. Do you recall anything about Dr. Menninger's visit on that occasion?

A. I just recall that she was in distress.

Q. And was it at that point in time that you recommended that she seek more advanced treatment?

A. Yes.

Q. It was at the hospital program you referred to earlier?

A. Yes.

Q. Okay. And I'm just going to direct your attention to the third page of that note. In terms of your plan.

First item, "Safety, recommend immediate medical leave starting on Monday 2/2 to level of anxiety and safety

issues, monitor GI distress and appetite."

Do you see that?

A. Yes.

Q. Okay. And medical leave, would that be a medical leave from work that you recommended?

A. Correct.

Q. And was that a safety issue from your perspective?

A. Yes.

Q. When you first began treating Dr. Menninger back in January of 2018, did you have any safety concerns about her then?

A. No.

Q. Did she express to you at that time any suicidal ideation?

A. No.

Q. Subsequent to this note that we've been looking at here from June 1, 2018, do you recall being contacted by Dr. Menninger's husband at some point?

A. I do.

Q. And do you recall him expressing a safety concern to you?

A. I do.

Q. And could you just tell the jury what, if anything, do you recall about that.

A. I recall Mason being concerned that she was making statements about wanting to end her life.

Q. And did you get on the phone and talk Dr. Menninger through that?

A. I did.

Q. As you were treating Dr. Menninger through this decline that you've referenced, were you aware that she was having discussions with her employer about possible accommodations?

A. I was aware there were discussions, yes.

Q. Okay. Did Dr. Menninger express to you frustration over the way that her employer was responding to those requests?

A. At times I do remember her being concerned about some of the -- her words being -- and even my words kind of being used in a way that didn't feel good. But my memory is also that a lot of our sessions were not necessarily about only work. That was not necessarily the focus of the time that we spent together.

Q. Sure. And were you spending time trying to get her to do activities that might help with her healing; is that correct?

A. Correct.

Q. Things like going out for a walk?

A. Yes. Some exposures, as we call them, yes.

Q. Playing with her daughter in the driveway?

A. Yes.

Q. Okay. And I think you said that Dr. Menninger, she was -- she was trying hard with those things?

A. She really was, yes.

Q. I'm going to direct your attention here to Joint Exhibit 136. And I'm just going to show you -- this is an e-mail that Dr. Menninger wrote to someone at her company and I just want to point out something that she wrote here. "While you keep saying that you are committed to engaging in a dialogue with me, I feel like you just keep twisting my doctor's words and refusing to answer any of my questions."

Do you see that?

A. I do.

Q. Do you recall Dr. Menninger sharing that concern with you at any point during her treatment?

A. What's coming to mind is I had sent this document about different leadership styles to -- I think it was Chad. And part of the one of the leadership styles was -- and I had said it's kind of more behind the scenes, someone who's a little more pragmatic, a little more quiet, but kind of supports leadership in a different way, than being extroverted or being the face of whatever.

And then what I do remember is that somehow those words kept coming up, if she was asked to do something, or is that behind the scenes enough, or something along those lines, and those aren't exact quotes, but somehow those words were kind of being used to question whether she was able to do things at work. That's what I recall.

Q. I'm now going to show you Joint Exhibit 19.

A. Oh, yes.

Q. And just to orient you here, I'm going to show you the second page of the document. And if you look here at the bottom half?

A. Yes.

Q. You see there, it looks like this is a form that you completed; is that right?

A. Correct.

Q. Okay. And in the section above, under "Diagnostic Impressions," there's a question about, "The patient has conceptualized the following areas as barriers in returning to work." Do you see that?

A. I do.

Q. And you write, "Decline to accommodate, now with hostile work environment."

Do you see that?

A. I do.

Q. And was the hostile work environment, is that what Dr. Menninger had communicated to you?

A. Yes.

Q. Okay. Do you have a specific recollection, all these years later, of what that consisted of, or would you just refer to your notes?

A. I would probably refer to my notes. I remember the behind the scenes. Oh, and I -- what was it -- I can't

remember. There was something more to that, but it's not coming to mind right now.

Q. Okay. That's all.

MR. HANNON: That's all I have, Your Honor.

THE COURT: Okay. Cross-examination.

CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

BY MS. MANDEL:

Q. Good morning, Dr. Kessimian.

A. Good morning.

Q. I'm Rachel Mandel. I'm going to ask you some more questions.

You treated Dr. Menninger in your practice in Providence for about a year; is that right?

A. That is.

Q. From January of 2018 to early 2019; is that right?

A. Correct.

Q. And you saw her mostly in person in your Providence practice?

A. Correct.

Q. And that was until Dr. Menninger relocated to New Mexico; is that right?

A. We might have had one or two virtual sessions, if she was really struggling to leave her home, but then afterwards, we had a few virtual sessions as she transitioned care to

New Mexico.

Q. And you also talked on the phone and e-mailed with her attorney, Patrick Hannon, during that time; is that right?

A. A few times, yes.

Q. You testified that you first met Dr. Menninger on January 22, 2018; is that correct?

A. Yes.

Q. And do you recall how Dr. Menninger first came to you as a patient?

A. I think she was just a self-referral. That's all I remember.

Q. And when you first met her on January 22nd of 2018, she told you herself that she had generalized anxiety disorder, social anxiety, and panic; is that right?

A. Yes.

Q. And you took that seriously, because she, herself, is a physician; is that right?

A. Yes.

Q. Can you explain what agoraphobia is?

A. So agoraphobia is eventually you have so much fear about leaving your home that you can end up pretty isolative and staying mostly confined to your home.

Q. And that's something that you additionally diagnosed Dr. Menninger as having; is that right?

A. Yes, she was struggling with that.

Q. And that was, again, as of January of 2018?
A. Correct.
Q. And that was based on Dr. Menninger's reports to you that she was having difficulty leaving her home at all at that point?
A. I wouldn't say at all, but it was increasingly difficult for her, yes.
Q. And Dr. Menninger reported to you that she was motivated to seek treat because her symptoms were, in turn, impacting her daughter; is that right?
A. Correct.
Q. Do you recall how old her daughter was at that time?
A. I know she went to Wheeler School. I want to say middle school, but I could be wrong. Maybe elementary. I'm unsure.
Q. And she also told you at that time that she already, as of January of 2018, had what she called spiralling fears about work; is that right?
A. Correct.
Q. And that was that she might lose her job, even as of January of 2018?
A. My recollection is that -- and this is from my note, as well, she had an end-of-the-year review, and at that time, there were public speaking requirements that were introduced, that were maybe not excessive, but were high expectations about the amount of public speaking. And I did receive a

form to support what she was saying to me. And she had recently also gone virtual, because she had left where she was living to support her daughter, who had been struggling in school, I believe. So she had a recent relocation, she was remote.

And what was your question again? Now I've lost it.

Q. That as of January of 2018, when Dr. Menninger first came to you, she had reported fears of losing her job, and she --

A. So she was -- her fear was, I believe, more about would she be able to fulfill these new responsibilities without becoming very ill and without needing a lot of medication to get through these responsibilities was more how I remember her talking about it.

Q. And you had concerns about how she would handle leaving a lot of medications?

A. I don't understand the question.

Q. Well, you testified a moment ago that Dr. Menninger reported to you needing, I think you said, a lot of medications to be able to do the things that were being asked of her at work?

A. No. I -- I guess what I was just trying to say from the history is that she had done public speaking engagements previously. However, had needed some medication to support her through that.

But now as the requirement was increasing -- and these medications are in and out in a day, people use them for flying, people use them for public speaking. These are medications that we use for specific fears, right? But if we have to face that fear every day, or we don't even know when that's going to come up, right, then the requirement for your body to get through those is going to need more medication, and sometimes even with medication, we're not going to be able to do it. So that's what I mean by that.

Q. And so as of your meeting with Dr. Menninger, one of your initial goals was how to work with her to navigate all of this at work; is that right?

A. That was part of my initial goal, yes.

Q. And let's pull back up Joint Exhibit 18. And this is your initial psychiatric evaluation note from that first appointment that you had with Dr. Menninger; is that right?

A. Yes. Yes.

Q. And towards the end of that first paragraph of your description of what you learned from Dr. Menninger, you noted that Dr. Menninger had already met with a lawyer at this point and, in fact, that that lawyer would work with you to do paperwork for her employer; is that right?

A. I don't -- "To provide."

Q. It's the second to last sentence of that first big paragraph?

A. Yes, that's what I wrote.
Q. And that lawyer that you were referring to there is Patrick Hannon there; is that right?
A. Yes.
Q. And let's look -- let's go a couple pages in. This is still part of that note from your first appointment; is that right?
A. Uh-huh.
Q. And you noted on your mental status exam notes, you said at the top of the page that Dr. Menninger appeared as tearful at times, measured, pale, thin, initially anxious; is that right?
A. Correct.
Q. And again, that was your initial impression the very first time you met with her; is that correct?
A. Yes.
Q. And in part, your impressions, based on your first meeting with her, helped educate you about what your next steps might be in treating her; is that right?
A. Correct.
Q. And helped inform how you handled that accommodation paperwork that you noted earlier in your note; is that right?
A. Can you connect those two again?
Q. Yeah, you testified a moment ago about earlier in your note, you said that you were going to work with Dr. Menninger

about her accommodation paperwork?
A. Oh, sure.
Q. And your impressions that you're looking at here helped inform what you filled out in that paperwork; is that right?
A. Yeah.
Q. Looking down at -- lower on the page, you talk about, under "assessment and plan," do you see that?
A. I do.
Q. And you noted that her baseline high anxiety -- can you explain what baseline high anxiety is?
A. So some of us, temperamentally, can be more risk averse, can be more aware of potential dangers in our environment, we're more introverted, less extroverted, less risk-taking, and highly responsible would be another part of that. So baseline, she's already quite anxious, and she already had some anxiety regarding her daughter's well-being that she was coping with, as well as there was a lawyer in her life, and there was financial responsibilities that she was coping with and a recent move. So all of those, at her baseline, she already had a high level of anxiety.
Q. And this -- this started to spiral, you noted, when it was suggested that she would be more visible at work; is that right?
A. Correct. Correct.
Q. And this was connected to this fight or flight feeling

that you described next; is that right?

A. Correct.

Q. And this is what you described as catastrophic thinking; is that right?

A. Fight or flight is separate than catastrophic thinking.

Q. Those are two separate things. So those are two separate feelings that you understood Dr. Menninger had at the time?

A. Correct.

Q. And the catastrophic thinking was, again, that fear that you mentioned earlier in your note that she was spiralling and feeling like she might lose her job as of January 2018?

A. Correct.

Q. Is that right? Okay. And beneath that you note Dr. Menninger's earlier traits of her upbringing and her family life; is that right?

A. Correct.

Q. And you note that had she had trauma secondary to her father's volatile behavior and the domestic violence that she had witnessed; is that right?

A. Correct.

Q. And this was relevant to sort of where she was coming from and what was otherwise impacting her; is that right?

A. Sure.

Q. And then down below, at the bottom of that page is where you list out the diagnoses that you had coming out of this

visit; is that right?
A. Uh-huh.
Q. And that was the panic disorder with agoraphobia which you described?
A. Yes.
Q. Is that -- the social disorder and the generalized anxiety disorder, which Dr. Menninger self-reported to you; is that right?
A. Correct.
Q. In looking at -- actually, one second.
And looking back at this page, you noted under -- you noted under "Social," you said pathologists working in the private sector, sole financial contributor and then you noted that husband empathic understanding partner, concern for excessive accommodation, all her needs are met, and she is not asked or required to leave the house. Do you see that?
A. I do.
Q. And that was referring to your concern that, in fact, Dr. Menninger's husband was sort of accommodating her pushback against leaving the house; is that right?
A. Correct.
Q. And in your professional opinion at the time, what impact did that have, Dr. Kessimian?
A. On what, specifically?

Q. Well, that was something that you noted as relevant in her medical history or her psychiatric history. So why did you think that was something important to note?

A. Well, just like everything is on a spectrum, accommodation is also a spectrum. And so in order to get better, anxiety leads to avoidance many times. There are some vital functions we all have to do in life to just survive. One of those would be able to leave the house, get medication, talk to other people. And if those were all going to be accommodated for Lisa because, I'm assuming, her partner didn't want her to suffer and be in distress, that would be problematic. So that would be a focus of concern.

Q. And that's something that you continued to work with Dr. Menninger on; is that right?

A. Correct.

Q. And looking back at the previous page of your notes from that January 22nd date, which you should have in front of you, you also noted that Dr. Menninger had what you called eating disorder behavior?

A. Could you highlight it?

Q. Yes. That's about two-thirds of the way down. The paragraph begins "eating disorder behavior." Do you see that?

A. Yes.

Q. And you noted that Dr. Menninger weighed herself daily

and was committed to remaining the same weight. Do you see that?

A. I do.

Q. And she also at the time was competing in ultra long power walking; is that right? It's in the end of that same paragraph?

A. Yes. Yeah.

Q. And again, that's something that you thought was a relevant part of her psychiatric history; is that correct?

A. Correct.

Q. And, in fact, you continued to be somewhat concerned about the eating disorder behavior throughout her treatment; is that right?

A. I continued to be concerned about her weight throughout our treatment, yes.

Q. And then let's look at what you developed as the plan during this visit. You noted here on the last page of your note from that initial visit, some medication changes that you were considering, and then you said, "Support accommodations at work so that public speaking is not a core requirement;" is that right?

A. Correct.

Q. Or work responsibility;" is that correct?

A. Correct.

Q. And that's because you wanted to minimize those effects

that you had seen with the spiralling thoughts about work; is that right?

A. I think it's a little more complicated than that. I think she has social phobia and one of the core issues with that illness is that public speaking, performance relating, any interaction where criticism, scrutiny is at risk can cause a cascade of physiological, behavioral issues for that person. And so if we could minimize that for her, in this area, that would be ideal.

Q. And coming out of this visit, you then filled out documentation for Dr. Menninger to take back to her employer at the end of January of 2018; is that right?

A. I don't remember specifically.

Q. Sure. We'll look at that.

A. Okay.

Q. And in fact, you already looked at it earlier this morning.

A. Oh. Okay. Then yes.

Q. This is an e-mail from you on January 31st, is that right?

A. Yes.

Q. And this is the e-mail that you sent to PPD yourself; is that right?

A. Yes.

Q. Okay. And you indicated in your e-mail to Mr. St. John,

you said, "Per our conversation, the forms are attached" and that's because you also had a phone conversation with Mr. St. John; is that right?

A. Yes.

Q. And let's look at what you sent in this e-mail.

This is the form that you looked at a few moments ago. Do you recall?

A. Yes.

Q. And you explained in bold, in the middle of this page, that Dr. Menninger has -- you listed out impairments, right? You said panic disorder with agoraphobia --

A. Yeah.

Q. And social anxiety disorder and generalized anxiety disorder?

A. Correct.

Q. And those were all diagnoses that you had endorsed as part of your treatment in your visit earlier in January?

A. Yes.

Q. And then if we -- if we look down at the section under number 5 -- well, let's actually, let's look at number 4 first. You noted -- and it's a little harder to tell where your writing begins, because it's not in bold, but you wrote in that impairment is long term with a chronic course; is that correct?

A. Correct.

Q. And that meant that it didn't have an end point that you saw coming; is that right?

A. Many of my illnesses are chronic in nature, and they ebb and flow, according to certain stressors. So it's just -- yes, the impairment is long term with a chronic course, but that chronic course, there can be times where the symptoms are less sever, times where they're more severe. If there's a stressor that's exacerbating those symptoms, they can become more severe. But, yes, it is a chronic condition.

Q. And in fact, that's what you reported in your answer to number four, about what the nature of this impairment was?

A. Correct.

Q. Okay. And then let's look down at number five, with regard to where you described what the conditions would limit, or how they might interfere with Dr. Menninger's performance of the essential functions of her job.

Is that your language below where it says, "Lisa suffers from panic disorder."

Do you see that?

A. Yes.

Q. So you wrote, "Lisa suffers panic disorder with agoraphobia, social anxiety disorder, and generalized anxiety disorder. This disability significantly interferes with Lisa's ability to perform major life activities, such as thinking, concentrating, communicating and working."

And you wrote that, as well, correct?

A. Correct.

Q. "Lisa is most effected in social situations and when she is required to speak in front of others. Despite these limitations, Lisa reports that she has historically fulfilled the essential functions of her job without accommodation. However, she frequently suffers from anxiety and other somatic symptoms triggered by social interactions and public speaking incident to her job. Further, Lisa's supervisor recently identified potential changes to her role involving more public speaking and social interactions. This has caused Lisa to experience increased anxiety with somatic symptoms, including diarrhea, heart racing, sweatiness, and increased respiratory rate."

And you wrote all of that?

A. I did.

Q. Yeah. Somatic symptoms, Dr. Kessimian, that is what's like a physical response to feelings of anxiety. Is that right?

A. Correct.

Q. And that would include things like gastrointestinal distress, the sweatiness, the racing heart rate; is that right?

A. Correct.

Q. And you wanted to explain that those were things that

Dr. Menninger experienced in connection with the diagnoses that you had given her; is that right?

A. Correct.

Q. Looking below, at number six, and this spans two pages, this is where you were asked to explain which essential job functions Dr. Menninger would have trouble performing; is that right? And your language below says, "Lisa's disability makes it extremely difficult for her to engage in public speaking and social interactions. While Lisa has been able to tolerate these types of activities to the extent that they have been --" oops. "-- necessary for her job, they often cause her to suffer from anxiety and other somatic symptoms. Any changes to her role that increase the need for public speaking and/or social interactions will increase her anxiety and worsen he somatic symptoms which will make it substantially more difficult, if not impossible for Lisa to perform her job."

And you wrote that, as well?

A. Correct.

Q. And that was your response to Dr. Menninger reporting to you that there were some additional needs for social interaction and public speaking coming with her job; is that right?

A. And a -- yes. Yes.

Q. And the next question says, "If the employee cannot

perform the essential function of his or her job or access --"

THE COURT REPORTER: I'm sorry. Can you please slow down just a little bit.

MS. MANDEL: Yes. Sorry. "If the employee cannot perform the essential functions of his or her job, or access a benefit of employment, what accommodations would you recommend?"

BY MS. MANDEL:

Q. Do you see that?

A. Yes.

Q. And you wrote in response, "Given Lisa's disability, I recommend that any social interaction or public speaking incident to her role would be minimized to the extent possible. Additionally I recommend that her role not be changed to require any increased public speaking or social interactions."

Do you see that?

A. I do.

Q. And so you were recommending that the changes that had been proposed in December of 2017 not be put in place; is that right?

A. Correct.

Q. To the extent that social interactions and/or public speaking is deemed necessary for Lisa's job, I recommend that

a plan be developed for these activities, in consultation with me or another qualified healthcare provider."

Is that right?

A. Yes.

Q. So essentially putting on the brakes for that type of thing, unless you or someone like you were being consulted?

A. Correct.

Q. Okay. And then you explained how the accommodations that you were proposing would improve Dr. Menninger's job performance in the next question. Is that right? In number 8?

A. Yes.

Q. And your response was, "Given Lisa's disability, I recommend that any social interaction or public speaking incident to her role be minimized to the extent possible." So you repeated again what you had said a couple of times, right?

A. Yeah.

Q. "Additionally, I recommend that her role not be changed to require any increased public speaking or social interactions." And so again --

A. Same thing.

Q. -- you wanted to put the brakes on that.

"To the extent that social interactions and/or public speaking is deemed necessary for Lisa's job, I

recommend that a plan be developed for these activities, in consultation with me or another qualified healthcare provider."

So, again, saying that if those things needed to be done, I would have to consult or someone else like me would have to consult in how that could be done; is that right?

A. Correct.

Q. Okay. And then number 9, the question is what restrictions, if any, are you placing on Dr. Menninger's ability to do her job? Is that right?

A. Yes.

Q. And in connection with this, you had reviewed the job description, correct?

A. I had reviewed the public speaking requirements.

Q. Okay. And your response was, "Social interactions and public speaking should be minimized as much as possible. To the extent Lisa is required to engage in social interactions and/or public speaking, these activities should be planned in consultation with her medical provider, in hopes of minimize Lisa's anxiety and somatic symptoms."

A. Yes.

Q. And this was in part because you had observed what you believed were somewhat concerning somatic symptoms or physical manifestations of Dr. Menninger's anxiety; is that right?

A. And what she reported to me was causing her distress.

Q. And so you wanted to make sure that she wasn't in situations that would increase her level of symptoms; is that right?

A. No.

Q. Well, so why would you have recommended --

A. So I do recommend outside of work that she actually do -- does engage in activities that increase her somatic symptoms. Right? So going out to the mailbox, trying to engage in talking to people in her neighborhood. So the treatment for anxiety is not about avoiding everything that causes you that increased anxiety. What I deemed was -- which seemed outside of the -- which seemed like an excessive amount of public speaking, if I remember correctly. And that's coming from someone who does not work and does not know exactly how much public speaking is required of her position, in particular. But the public speaking requirement that I remember was quite broad. It was very general. I believe the first line said up to 500 people biweekly, monthly, or quarterly. That was like number one, and that can happen once or twice, and then it went down to 50 to 100 people, and I can't remember the rate. And it went down again. So it was the fact that the amount of public speaking that was being requested was at such an extreme rate that I felt that was going to be detrimental and that she was going to have -- she was going

to be flooded with symptoms from her sympathetic nervous system, that she would not be able to recover. Because you also have to remember that with social phobia, it's not just about the presentation. It's the days leading up to the presentation. It's thinking about how you're going to say, what you're going to say, what is someone going to comment, how am I going to respond? And she is losing weight, she is very profoundly distressed about this. And if there is a way -- and again, this is just from my own knowledge of physicians, I'm not a pathologist, I'm a psychiatrist, but again, in my mind, this amount of public speaking for a pathologist, I was just kind of like, what else does she do for her job? Because you would have to just be prepping for public speaking the whole time you're working, as far as I'm concerned, with the amount of public speaking that was being requested of her.

The other thing with anxiety is structuring expectations does help mitigate symptoms. So if there was a little bit more clarity regarding the rate of public speaking, how many people were going to be there, I do believe Lisa would work towards doing something. That was how she presented to me. And if I recall, she even offered -- there was a -- I want to say Belgium, but I could have the country wrong. There was one cohort internationally where she felt very comfortable with her peers and very

comfortable presenting. And she even said I would be more than willing to like continue that cohort. It's really these kind of US -- I think she said US labs, but, again, I am not privy to PPE -- PPD, I don't even know their name, what they do for their company. But she was willing to kind of meet in the middle and try to find ways so that she could still do facets that felt comfortable, that felt doable, again, while in treatment, while taking medication, while doing exposures, but this did feel like an extreme expectation. And that's what I was trying to shift, not that she should never do things that cause her anxiety because many things were causing her anxiety.

Q. Dr. Kessimian, to just draw your attention back to that accommodation paperwork that you filled out, it should be on the screen?

MS. MANDEL: I'm seeing it here. Is it?

THE COURT: Yeah, I have it, too. You're talking about the nine-question form?

MS. MANDEL: Okay.

BY MS. MANDEL:

Q. You should now have it on the screen in front of you your accommodation paperwork that you filled out for Dr. Menninger; is that right?

A. Yes.

Q. And you see that you signed this on January 31, 2018?

A. I do.

Q. And that was, in fact, before you filled out additional paperwork where you, at that point, were aware of certain buckets of job responsibilities that listed out the number of people and the frequency. Isn't that right?

A. Oh, that is true. That is true. Correct.

Q. So at this point, you were acting based on your understanding of what Dr. Menninger had described to you and her job description, and your understanding of what a pathologist might do; is that right?

A. Yes. And my understanding, also, of the illness.

Q. Correct. And your understanding of what a pathologist might do, in part, comes from your own medical training; is that right?

A. Yes.

Q. And your belief that a pathologist often does sort of behind the scenes work; is that right?

A. Well, they run a laboratory. Right? And so it's not direct patient care. It's not bedside care. So it is more, I would guess, like quantitative, qualitative types of care, and running a staff in a lab. Right? Labs have to run smoothly, I would assume, as well.

Q. And this is based on your own assumptions and knowledge, having gone to medical school yourself, right?

A. Correct.

Q. Let's look at your notes from your next visit with Dr. Menninger. This was from a couple of days later. This was from February 2nd of 2018; is that right?

A. Uh-huh. Yeah.

Q. And at this visit, you noted that Dr. Menninger reported to you, "I'm just worried all the time. I wake up with my heart already beating fast, thinking about how I have to see the people that I work with at the end of the month after handing in those letters to HR."

Do you see that?

A. I do.

Q. And this was Dr. Menninger's report simply at having handed in documents asking for an accommodation; is that right?

A. Correct.

Q. And you felt that it was significant to note this as her chief complaint; is that right?

A. Yes.

Q. And that's because even having that initial interaction with her employer was having this impact on her. Isn't that right?

A. Can you repeat the question?

Q. Yeah. The reason that you noted this as Dr. Menninger's chief complaint at this time was because even having had a conversation and starting the conversation with PPD about the

need for an accommodation was having this impact on her. Isn't that right?

A. I noted it because it's what she said.

Q. And looking down at the sort of middle part of that page, you noted that you spoke at length about Dr. Menninger's experience in the work environment, where she feels that because she is more introverted and analytical, she is being criticized for things that are unchangeable. Do you see that?

A. Uh-huh.

Q. And then you noted "has difficulty advocating for herself and has already resigned to defeat in the corporate culture."

Do you see that?

A. Yes.

Q. And this was at just your second visit with Dr. Menninger, a few days after she had told her employer that she had an anxiety condition; is that right?

A. I don't know what she specifically said to her employer.

Q. Well, you provided an accommodation letter on January 31st, right? We just looked at that?

A. Yes.

Q. And just two days later, at that point, you noted that Dr. Menninger was having difficulty advocating for herself and felt resigned to defeat at work, basically?

A. Sure. Yes.

Q. And during this same time period, Dr. Kessimian, you were having communications, yourself, with Patrick Hannon, Dr. Menninger's attorney; is that right?

A. I believe we e-mailed a couple of times and maybe talked on the phone once.

Q. Let's look at --

MS. MANDEL: Before I bring up this Exhibit --

THE COURT: Which one is this?

MS. MANDEL: This is going to be --

THE COURT: What exhibit number is it?

MS. MANDEL: It's going to be -- the one that has the BO on it.

Ms. Belmont, we may just have to bring it up.

THE COURT: You can bring it up just for the witness now.

MS. MANDEL: Yeah.

BY MS. MANDEL:

Q. Here we have some e-mails from starting on February 3rd at the bottom, and at the top it's from February 4th. Do you see that?

A. I do.

Q. And this is an e-mail from you to Dr. Menninger, at the top, on February 4th; is that right?

A. Correct.

Q. And actually, let's look, first, at the e-mail below.

Dr. Menninger forwarded to you an e-mail that she received from Mr. St. John; is that right?

A. Correct.

MR. HANNON: Judge, I think it's just some confusion from the jury in terms of why they can't see it.

THE COURT: Because it's not yet in evidence.

Go ahead.

Thank you, Mr. Hannon.

Whenever I say it's just -- you can show it to the witness or only the witness, that means it's not yet in evidence.

Go ahead.

BY MS. MANDEL:

Q. Dr. Kessimian, at the bottom of this page, you see that Dr. Menninger had forwarded -- shown you an e-mail that she had received from Mr. St. John; is that right?

A. Yes.

Q. And then up above that, she wrote to you, and there's some discussion of having an appointment on an upcoming day; is that right?

A. Correct.

Q. And then -- this is, again, on February 3rd, Dr. Menninger reported to you that Mr. St. John had responded to the forms that you had provided and she had provided at the end of January; is that right?

A. Could you repeat that question? Sorry.

Q. Sure. The second paragraph of the February 3rd e-mail. Do you see that in front of you?

A. During our appointment yesterday?

Q. Yes.

A. Okay.

Q. "During our appointment yesterday, Chad sent an e-mail response to the forms that were submitted." Do you see that?

A. Yes.

Q. And then Dr. Menninger reported to you "reading it triggered an instant panic attack and made it hard for me to focus on anything else for the rest of the day. I copied and pasted his e-mail below, and also forwarded it to Patrick for guidance."

Do you see that?

A. I do.

Q. "I realize that the thought of face-to-face interaction with my US colleagues on any level is triggering a significant amount of anxiety and panic that I've been trying to avoid at all costs."

A. Yes.

Q. "As you mentioned yesterday, travel in and of itself does not trigger panic, but visiting the US lab does. The ideal arrangement for me would be to interact with them on a remote basis only once the interim US lab director is in place,

March 1st. I don't know if they will allow this, however."

A. Yes.

Q. And this was, again, on February 3rd, a couple days after you sent that initial accommodation paperwork. And Dr. Menninger was providing further context for you about how it really wasn't going to work for her to travel to the US location because of her fear of the symptoms that it was triggering; is that right?

A. Correct.

Q. And did you have awareness at this point, Dr. Kessimian, that Dr. Menninger's primary work location was in Highland Heights, Kentucky?

A. I did not.

Q. Because Dr. Menninger did not explain that to you?

A. Or I may never have asked.

Q. And then up above, you wrote an e-mail back to Dr. Menninger the next day; is that right?

A. Yes.

Q. And you set up another appointment, and then you explained that you were going to ask Mr. St. John, after you consulted with Patrick Hannon, if he could list what the specific expected duties were, so that you could talk with Dr. Menninger about a percentage; is that right?

A. Correct.

Q. And you testified a couple moments ago about your desire

to have a little bit more information about the number of people who would be at meetings, and how much time they would take up of Dr. Menninger's schedule; is that right?

A. I just needed information to help make recommendations. That's what I was looking for.

Q. And you were trying to get that additional information --

A. Correct.

Q. -- from Mr. St. John, Dr. Menninger, and at the same time, consulting with Dr. Menninger's attorney?

A. Correct.

Q. And then you said after that, another option would be to ask -- another option would be to ask what percentage of your job duties could remain remote, as we are seeking 100 percent?

A. Yes.

Q. And that's because you were advocating for Dr. Menninger to be able to work 100 percent remotely and not go to Highland Heights at all?

A. So I didn't know about Highland Heights, so that didn't play a role in it. My understanding was she was mostly remote, and considering she wasn't doing well, to continue to ask for remote.

Q. Because that would have allowed her not to have those social interactions that were concerning to you?

A. Well, that would have let her symptoms at least not

worsen as she continues to get treatment.
Q. Because it would have avoided the social interactions and public speaking that concerned you; is that right?
A. Correct.
Q. And then the next paragraph you say, "I'm glad you're listening to quiet." What did that mean?
A. So there's a book, and it's written by a Harvard lawyer, I think her first name is Susan, I can't remember her last name. And the title of the book is *Quiet: The Power of Introverts in a World That Can't Stop Talking*. So I do recommend this book to many of my patients who struggle with anxiety and struggle with speaking up and advocating for themselves and understanding that there's strength sometimes in not being the loudest one in the room.
Q. So you said, "And remember pace is important, and the back and forth e-mails and questions."
And that was back and forth e-mails and questions from PPD; is that right?
A. From PPD to Lisa, not with me.
Q. Yes.
A. Yes.
Q. And you said that was a good sign. And good is in all caps, right? So you were pleased with that. And they were looking for more clarity and specifics?
A. Correct.

Q. And then you ended the note by saying you would talk to Patrick. And that was Patrick Hannon?
A. Correct.
Q. Dr. Menninger's attorney?
A. Yes.
Q. The next day. And then you would meet with Dr. Menninger the next day after that, I think, which was a Friday? Is that right?
A. It sounds like it. Yes.
Q. And you did, in fact, have that follow-up conversation with her attorney the next day?
A. You know, I don't recall, but I'm going to have good faith that I did.
Q. You have no reason to believe --
A. Yes, thank you.
Q. And during that follow-up conversation with Mr. Hannon, in fact, you consulted about how you should word additional requests to PPD; is that right?
A. I don't recall that.
Q. A couple of weeks later, or a few days later in February, you received a list of specific job tasks that were required for Dr. Menninger's work; is that right?
A. For public speaking, yes. That's the list I remember.
Q. And that's what you were talking about --
A. Yeah.

Q. -- a few moments ago, with regard to what those speaking and social interaction requirements would be?

A. Correct.

Q. Let's look at your response to that.

This is an e-mail from you to Chad St. John; is that right?

A. Yes.

Q. And in this e-mail, you were the one sending this information to Mr. St. John on Dr. Menninger's behalf.

A. Correct.

Q. Is that right?

A. Yes.

Q. And you testified a few moments ago that you -- you began the document that you sent by providing I think it's called psychoeducation?

A. Correct.

Q. Is that right?

And you would agree that this psychoeducation was specific to Dr. Menninger. It wasn't general. It was really about what she needed?

A. Well, I would say social anxiety disorder is a neural-behavioral disorder with biological and genetic risk factors that lead to physical behavioral and cognitive symptoms is general. I would say it got more specific as the paragraph went on. And then, in general, I was trying to

give a concrete example of how to really think about it physically, almost as if her vocal cords and her brain cannot work with this type of exposure and the intensity of exposure to this amount of public speaking. So those are not specific to Lisa. Those are more general to people who struggle with this disorder.

I think I became more specific when I tried to give recommendations.

Q. Well, in looking at the psychoeducation information that you provided, really even in the first sentence, if you say social anxiety disorder, you begin by talking about Dr. Menninger in particular. Do you see that?

A. Yes.

Q. And you would agree, wouldn't you, that throughout these few paragraphs of information about psychoeducation, it was in the context of Dr. Menninger's impairments that you had diagnosed and your recommendations, correct?

A. Correct.

Q. And so you begin, in that first paragraph, by saying "Lisa's difficulty with socializing and public speaking is not a manifestation of shyness."

A. Yes.

Q. And then you say, "Social anxiety disorder is a neural-behavioral disorder with biological and genetic risk factors that lead to physical, behavioral, and cognitive

symptoms, which are pernicious and chronic in nature."

A. Yes.

Q. And the pernicious, that means -- I mean, these were pretty serious?

A. Correct.

Q. And they were -- the symptoms were manifested in ways that were serious and chronic, meaning they were not going to be abating any time?

A. That's not necessarily true. Again, chronic does not reflect symptom severity at a specific point in time or when there's a specific exacerbating event or issue. Chronic just means that this is something that she has, she's going to have it for a long time, but there are ways we manage chronic illness, just like we manage asthma, allergies. Right? There's ways we can manage these things.

Q. Sure and I'm not asking whether these are things that can be managed?

A. Oh.

Q. It was chronic. It was not going away, you know, say the next day, the next week. It was something that was sort of there and not abating?

A. Correct.

Q. Okay. And then the next paragraph, you explain, "In the past, Lisa endured these work events and presentations with intense discomfort and with the use of a sedative."

And this was as reported to you by Dr. Menninger, correct?

A. Correct.

Q. "The sedative did help take the edge off, but also came with side effects, including impaired attention, concentration, short-term memory deficits, lethargy, and an extended length of time to return to her cognitive baseline to complete the more analytical and medical facets of her work."

And you wrote that, as well, with regard to Dr. Menninger, correct?

A. Correct.

Q. And this was in addition to your own -- based on your own medical knowledge, also a reflection of what Dr. Menninger had reported to you, given that you had just started treating her, correct?

A. Yes.

Q. And when you noted the side effects of the medication, those are things that you can see with sedative medications, correct?

A. Correct.

Q. And the lethargy, in particular, lethargy is becoming tired or droopy eyed; is that right?

A. I mean, lethargy has a lot of definitions. What I remember in particular that Lisa reported, to the best of my

memory, is that it would take her a lot of recovery time after taking the sedative.

So she could get through the event or the speaking engagement, but then the recovery after that, she was quite tired and drained after that. And also the medicine, depending on what sedative you're using, sometimes can still be in your system.

THE COURT: I'm going to pause you here.

Ladies and gentlemen, we'll take the morning break.

All rise for the jury.

(The jury exits the courtroom.)

THE COURT: All right. We'll resume at 11:30.

(Court in recess at 11:15 a.m.

and reconvened at 11:31 a.m.)

THE COURT: Kellyann, you can go get the jury.

(The jury enters the courtroom.)

THE COURT: Go ahead, Ms. Mandel.

BY MS. MANDEL:

Q. Dr. Kessimian, you next described the symptoms that Dr. Menninger had, leading up to any type of speaking role or social event; is that right?

A. Correct.

Q. And you said it's important to note that the weeks leading to the expected speaking engagement or social event resulted in insomnia, panic symptoms, GI discomfort, and

weight loss?
A. Correct.
Q. And again, this was reported to you during your initial appointment that you had with Dr. Menninger, correct?
A. Yes.
Q. You then said a concrete way to think of this disability -- and this was your attempt to, I think as you described, educate PPD about how Dr. Menninger's impairments affected her in a very real way, correct?
A. Yes.
Q. Is that your her brain and body are not able to tolerate public speaking engagements and socializing, and it is as if her vocal cords and brain become paralyzed while her blood pressure, heart rate, and breathing all increase, and it is for all of the above reasons that I am recommending the following reasonable accommodations."

And so again, this is where you wanted to make sure PPD understood how tasks like public speaking or engaging in social interaction physically impacted Dr. Menninger, correct?
A. Correct. And I would add, I do recall that at some point, Lisa reported that someone at work, and I don't know who, said it's just shyness. So that was another reason for me to be very concrete in my description.
Q. And it was actually Dr. Menninger reported that's

something that had been said to her from childhood; is that right?

A. Oh, that's not how I remembered it, but that could also be true.

Q. Let's look down at the bottom of this page. This is where you started to list out the accommodations that you were requesting on Dr. Menninger's behalf; is that right?

A. Correct.

Q. And the first item says, "SLT presentations, town hall, COO/EVP meeting."

Do you see that?

A. I do.

Q. And do you recall that this was a list that had been provided by Dr. Menninger's employer and you were going to respond to each of these; is that right?

A. Yes.

Q. And did you have an understanding at this time, Dr. Kessimian, about what SLT presentations, town halls, COO/EVP meetings were?

A. No.

Q. But you did, in response to this, write up reasonable accommodations, correct?

A. Correct.

Q. Okay. And then actually, below, it has the frequency listed as well, in addition to the number of people who would

be present, right?
A. Correct.
Q. And you indicated earlier that you felt it would be helpful for Dr. Menninger to know how often these things might occur and how many people might be there; is that right?
A. Correct.
Q. So this was providing that helpful information, correct?
A. I struggle with the word "helpful." It's providing me information, but again, up to 500, to me, is so broad. Does that mean one to 500? Frequency, biweekly, monthly and/or quarterly? That doesn't give me information. That's -- that's a frequency I cannot define, actually. So I question how helpful this information was, other than the fact that it was clear to me that she was going to be having to speak to many people, very often.
Q. And you'd agree, wouldn't you, that your response was to list out what you felt would be a reasonable accommodation?
A. Correct.
Q. In light of this information?
A. Correct.
Q. And so let's look at what you wrote. It's your language where it says, "Reasonable accommodation" and has a dash, right?
A. Correct.

Q. And you wrote, "Responsible for all slides, handouts, presentation material, with necessary information, but will require a reader to present to the group, or can prerecord the audio/video and it can be played at the meeting." And let's look where it continues on in the next page "available for questions via e-mail after the meeting." Do you see that?

A. I do.

Q. And this was your recommendation that actually Dr. Menninger would prepare materials and someone else would present them to these meetings of up to 500 people; is that right?

A. Yes.

Q. And that's because you felt that this would keep her healthy and keep her from experiencing those sort of severe symptoms that you describe. Is that right?

A. Correct.

Q. Okay. So looking down below at the next item, and you would agree that this was something that was also provided as an explanation by PPD at the beginning of that paragraph 2; is that right?

A. Yes.

Q. Where it says, "Client bid defense, issue resolution, calls." Did you have an understanding as to what "HH/client site meetings" meant?

A. Nope.

Q. Because you didn't know at this time that Dr. Menninger's primary work location was Highland Heights, Kentucky. Is that right?

A. Correct.

Q. "Phone." And then it says, "Frequency, once a month at minimum for client." Do you see that?

A. I do.

Q. And then attendees/audience up to 50 attendees?

A. Correct.

Q. And that's, of course, a much smaller number than up to 500; is that right?

A. But, again, the frequency would be once a month, it could be daily, it could be twice a day. Once a month, at a minimum, for a client. That was the information provided.

Q. And so the fact that that type of interaction would be requested of Dr. Menninger was concerning to you?

A. Correct.

Q. And so then you wrote the section beneath, where it says "reasonable accommodations," and it has a dash?

A. Correct.

Q. "Available via e-mail, text, remote video, conferencing for a representative of the client, one to two person audience maximum."

A. Uh-huh.

Q. "If it is a site meeting, surrogate or reader with all necessary information, realtime access to me will be available."

Do you see that?

A. Yes.

Q. And did you draft this language or did Dr. Menninger draft this language?

A. I'm realizing there's a mistype. So Dr. Menninger and I did this together, because I clearly don't work where she works. And so in order to have some reasonable accommodations, I needed some understanding of what her work responsibilities were and what she felt she could do. And so I meant to say Dr. Menninger will be available, not me. I will not be available for that.

But yes, she did help me with the accommodations, because I had to get from her perspective what she felt willing and able to do.

Q. And she was the one with knowledge of what her job entailed, right?

A. Right. Yes.

Q. And when you wrote "a surrogate or reader with all necessary information," do you see that?

A. I do.

Q. And a surrogate or reader meant someone else to do the actual presenting, correct?

A. Correct.
Q. And that would be, again, to sort of protect Dr. Menninger from experiencing those terrible symptoms that you described could happen with her anxiety?
A. Yes.
Q. The next item down, number 3, it says, "Client site meetings"?
A. Yes.
Q. And did you, again, did you put together with Dr. Menninger the language that says "reasonable accommodation," and has a dash?
A. I did.
Q. "Would like a surrogate to attend, but will be responsible for problem solving/ideas for resolution, if e-mailed/communicated to me a few days before anticipated visit."

And again, that "me," that's because Dr. Menninger was writing this with you?
A. Right.
Q. And again, this refers to having a surrogate attend. And it was your intention that someone else would actually be physically present for these meetings, correct?
A. It was.
Q. And again, to protect Dr. Menninger from those symptoms that she would experience with the anxiety.

A. Correct.

Q. Looking down at the next item, number 4, technical sales presentation, internal and external; i.e., internal sales meeting. And again, it says HH, that same abbreviation, client site meetings and phone.

A. Yes.

Q. And you didn't have knowledge at this time as to what HH referred to?

A. I did not.

Q. Because you didn't know that Dr. Menninger's main work location was Highland Heights?

A. Correct.

Q. But Dr. Menninger was working on this with you?

A. Yes.

Q. And you, together, with Dr. Menninger, put together the reasonable accommodation; is that right?

A. Yes.

Q. And it says, "Excused from sales presentations, but again, will provide any necessary data information for the reader or surrogate to have at their disposal."

Do you see that?

A. I do.

Q. And again, that's referring to someone else who's not Dr. Menninger actually doing the in-person interaction part of this; is that right?

A. Yes.

Q. And again, that was to protect Dr. Menninger from those terrible symptoms; is that right?

MR. HANNON: Objection as to the term "terrible."

THE COURT: Overruled.

BY MS. MANDEL:

Q. Down below, where it says number five, for customer visits, do you see that?

A. Yes.

Q. This is for "customer visits, lunch, dinner, and social interactions may occur, expected 60 to 80 percent of the time, in order to build business relationships."

A. Yes.

Q. And then there's a dash. Is that the language where you and Dr. Menninger drafted, is that where it starts, where it says "surrogate"?

A. I believe so.

Q. It says, "Surrogate, as this is not her strength/skill set and her disability will flare with significant impairment."

A. Yeah.

Q. That's your language, as well.

And significant impairment, is that -- that's referring to those symptoms that you talked about previously, correct?

A. Correct.
Q. And so a flare-up would be essentially a worsening of the symptoms like the paralyzed vocal cords, and the GI symptoms and things like that.
A. So I want to be clear, her vocal cords will not be paralyzed. That was just a concrete example of how you could imagine why she's not able to do those things, but more of other symptoms such as tachycardia, sweating, feeling like this is the end of the world, GI distress, all of those symptoms, yes.
Q. And the weight loss, as well?
A. Well, the appetite gets suppressed, and then that can lead to weight loss, yes.
Q. And it was your opinion, as you were writing here, that lunches and dinners, customer visits with social interactions would bring on those worsening symptoms?
A. Correct.
Q. And that's why you recommended, as the reasonable accommodation, that a surrogate or simply a different person do this?
A. Correct.
Q. You also said that she's able to build business relationships in a more behind-the-scenes fashion?
A. Yes.
Q. And that was based on your understanding of what a

pathologist might be able to do that didn't involve the social interactions?

A. Yes. And it was also Dr. Menninger did mention that she had mentored some colleagues, more on an individual basis, and had gotten -- I don't remember the exact language. I just want to be clear, but had gotten some good feedback that they really appreciated her feedback and her guidance. And so part of -- that's also what we talked about.

Q. And you thought that was something that she could do instead of interacting with the clients?

A. Correct.

Q. And then the last one is number 6, and it says, "Travels up to 30 percent." And it's your language where it says "reasonable accommodation," slash -- or dash, right?

A. Correct.

Q. And you wrote, "When possible, traveling to the Brussels site versus state side."

A. Correct.

Q. And again, at this point, you had no knowledge that Dr. Menninger's main work location was actually in Kentucky, correct?

A. I did not, no.

Q. And your recommendation that travel be more to Belgium, instead of in the US, was based on Dr. Menninger telling you that she had discomfort about going to the lab in the US,

correct?
A. Well, that she felt more comfortable going. So if they needed her to do traveling up to 30 percent, and that was a requirement, a job requirement, that what she felt would be a good accommodation for her would be that the majority of the traveling be to another site where she had some colleagues that she felt comfortable with, she felt very comfortable presenting there, and had history with them. So that's kind of more how I looked at it. Because, again, we were trying to come up with solutions, right?
Q. And one of those solutions was limiting Dr. Menninger's travel to Highland Heights?
A. Correct.
Q. And this was in the context of you looking at just trying to maintain her position as 100 percent remote, I think, was your language, correct?
A. Well, if she was traveling, would she be 100 percent remote?
Q. Well, if you recall, we looked at an e-mail that you had written about wanting to maintain 100 percent remote. That was part of the goal that you were discussing with Dr. Menninger?
A. At the time?
Q. At the time.
A. Right. At the time.

Q. And let's -- just to remind ourselves, let's look back. You sent this e-mail on February 14th to Mr. St. John?

A. Okay.

Q. Is that right?

A. Yes.

Q. Okay. Let's look at the context of how you came up with these accommodations.

MS. MANDEL: This is agreed Exhibit 451.

BY MS. MANDEL:

Q. Dr. Kessimian, this is an e-mail that you wrote to Dr. Menninger on February 6, 2018, correct?

A. Yes.

Q. And this is between the time when you wrote the accommodation, the initial accommodation documents on January 31, and when you wrote the reasonable accommodation request on February 14th. This kind of falls in the middle; is that right?

A. Yes.

Q. And in this e-mail, Dr. Menninger had forwarded some information below, and then you wrote back and said to Dr. Menninger, you said, "Lisa, this information is helpful and gives us a starting point."

And as far as you recall, was that the information listing out those job tasks that you had looked at?

A. Yes.

Q. "As far as those large presentations for over 100 people, we are going to work with the lawyer" -- that was Patrick Hannon?

A. Yeah.

Q. "Around you writing a presentation and having a surrogate present the information."

Do you see that?

A. I do.

Q. And so, again, you were explaining to Dr. Menninger that you and she would work with her lawyer to have a surrogate do those things instead, as an accommodation request, right?

A. That's what it says, yes.

Q. "Since you are the" -- and it looks like maybe there's a typo here, "Since you" -- it's supposed to say, "You are the one." Would you agree?

A. Yes.

Q. "Who most intimately understands all the things you already do, start brainstorming on how you can contribute in a more behind-the-scenes fashion."

And this was again you suggesting what you thought of as more sort of classic pathologist work as something that Dr. Menninger could suggest that she would be able to do?

A. Could you repeat that one more time?

Q. Sure. You testified earlier about sort of your thought about what a pathologist can do, you know, working behind the

scenes in a lab?

A. I feel like my words are getting mixed up.

I testified that -- I think -- I was trying to understand, from my understanding, Dr. Menninger had had -- had worked at this position for a couple of years. I don't know the exact timeline, and that she had good performance reviews and was doing well, and then a new expectation of a specially intense public speaking and social engagement regimen was introduced, and at that time her symptoms worsened, correct? I mean, that's my understanding of the timeline.

So I was referencing behind the scenes not about the work that she does in the lab, but she had done something for two years at this job, or however long she had the job, that got her to the executive director lab position. This is my, again, my formulation just as a human being looking at the information given to me.

So is there something that we can highlight that's a little bit more behind the scenes, that doesn't have such a social element, or a performance element that involves her job responsibilities that we can put in here? That's what I meant by behind the scenes.

Q. And as you testified, at this point, you didn't actually even know where Dr. Menninger's main work location was; is that correct?

A. Yes, I do hear that in your questioning. I would also like to say, though, that my priority is not her work, it's her health. So as far as maybe there are details missing or some kind of information that I didn't have the exact information, I was working with her work, because this was a specific stressor that I thought we could actually make some in-roads so that her symptoms would get better. So that was my goal. So I want to be clear about that.

Q. Because you were trying to protect her from those symptoms?

A. I do take issue with the word "protect." I'm not anyone's protector. I am their doctor.

So she has a diagnosis, a clinical syndrome that causes impairment for many people, but is manageable, again, with things that is we do for our health: accommodations, changes, switches, things that we can do. So that's what -- I'm not trying to protect anyone from anything; I'm trying to help them navigate how to best cope with an illness.

Q. And you were trying to help Dr. Menninger cope to avoid as frequent incidents of those symptoms that you listed; is that correct?

A. I'm trying --

Can you say that one more time?

Q. You were trying to help Dr. Menninger navigate her job to avoid those symptoms coming up, to the extent that that was

possible, correct?
A. Correct.
Q. Then after your statement about working in a more behind-the-scenes fashion, in the next line you say, "We will not send anything over until we run it by the lawyer."
And again, that was Dr. Menninger's lawyer that you were also working with, Patrick Hannon, correct?
A. Correct.
Q. After the communication that you sent to PPD on February 14th that we looked at, you e-mailed that psychosocial education and the accommodations to Mr. St. John. Do you recall that?
A. I do.
Q. And after that, you didn't send Mr. St. John any other letters about Dr. Menninger's ability to perform her work tasks, did you?
A. Not that I recall.
Q. And you didn't have any other e-mail communications where you sent any information to PPD about whether Dr. Menninger could safely perform her job, correct?
A. There was no communication.
Q. You did, though, continue to work with her lawyer, Patrick Hannon, and with Dr. Menninger, correct?
A. Yes. And but -- but I also want to clarify by "work with her lawyer," I maybe e-mailed Patrick four times. I never

met him before today. And I think maybe we talked on the phone, in summary, twice, maybe three times over the year.

Q. It's your testimony that you e-mailed Mr. Hannon four times?

A. It was not often. It was not daily. It was not weekly. I don't know the exact number.

Q. And let's look at one of those e-mails that you wrote to Mr. Hannon. This is agreed Exhibit 452.

A. Oh, right.

Q. And this is an e-mail that you wrote to Mr. Hannon, dated April 8th. Do you see that?

A. Uh-huh.

Q. And so this is -- you sent that e-mail to Mr. St. John on February 14th. This is then April 8th, so a little bit after that, right?

A. So February, April -- right.

Q. So a little less than two months later, right?

A. Yes.

Q. And let's read what you wrote to Mr. Hannon at this time. You wrote, "Patrick, I am meeting with Lisa, and the recent back and forth e-mails with Chad, as well as the denial of certain accommodations, is taking a significant toll on her both her physically and mentally, where we are considering more intensive treatment.

"Although Lisa has a 30-day PTO" --

That's paid time off? Is that your understanding?

A. It is, yeah.

Q. -- "in addition to a 22-day leave bank that is accessible for paid leave, she is concerned that if she decides to use this resource, it will be used against her as a sign that she cannot fulfill her job requirements."

Do you see that?

A. I do.

Q. And that was based on what Dr. Menninger told you some time prior to April 8th, right?

A. Correct.

Q. "Is this accurate, or is she protected?"

And then you next wrote, "Also, I am not sure how to word this, so I was hoping for some advice. Chad continues to mention my phrase "behind-the-scenes leadership" --

And that's that term that we saw in your last e-mail?

A. Correct.

Q. -- "and then when rejecting the proposed accommodations, remarking that Lisa is going against the advice of her doctor if she continues to perform these functions."

And you wrote that, as well, correct?

A. Yes.

Q. And then the next paragraph you said, "I want to clarify

that, as a physician, I make recommendation, but I am not intimately knowledgeable, just like when I do it for children in school, about what is feasible for the system to accommodate, and that we could come together to brainstorm. I can make some time to attend a meeting. I am available by telephone or Internet platform. I have also attached articles about pragmatic leadership versus charismatic leadership."

Do you see that?

A. I do.

Q. So in fact, those articles that you mentioned about leadership before, those are things that you sent to Mr. Hannon, correct?

A. That's what it seems like, yes.

Q. And neither Mr. Hannon nor Dr. Menninger invited you to come to a meeting with PPD; is that right?

A. No one invited me, no.

Q. As far as the "behind the scenes" phrase, and then you say "which I now regret, to date Lisa has remotely attended or been available via Webex conference call or e-mail and dialed in, and just hasn't formally presented. It is her understanding that this method has worked to date, instead of a surrogate. We were hoping for status quo and also an understanding of her more pragmatic versus charismatic visible style."

Do you see that?

A. I do.

Q. Okay. And then you told Mr. Hannon you hope this helps at the end of the e-mail, right?

A. Yeah.

Q. So you indicated in this last paragraph of the e-mail that you now regretted writing that "behind the scenes" language in your previous document that you sent to PPD, correct?

A. Yes, because I was concerned it was being misused.

Q. But you testified just a few moments ago that you never sent any follow-up letter or communication to PPD saying that that actually wasn't what you meant to say, correct?

A. Correct.

Q. And then in this paragraph as well, you testified that you were hoping for "status quo." That was referring to maybe there wasn't the need for a surrogate?

A. Correct.

Q. But, in fact, you never sent a follow-up letter or e-mail to PPD saying that was the case, correct?

A. Again, there was no communication between me and PPE or whatever. Yes.

Q. Returning to your visits that you had with Dr. Menninger, shortly after you sent that February 14th letter to PPD, Dr. Menninger actually told you that HR and her boss had

responded in a promising manner. Isn't that right?
A. I'm -- is this on an e-mail or something? Yes. Then yes.
Q. And we can look at your notes, in fact.
Looking back at your notes from just after you sent that information on February 14th, you'd agree that this was your next appointment with Dr. Menninger on February 16th; is that right?
A. Yes.
Q. And if you look at your language that you put in as your notes after history of present illness --
A. Uh-huh.
Q. You noted that she, meaning Dr. Menninger, was able to speak with both HR and her boss regarding the document for accommodations. Their response was promising?
A. Yes.
Q. So at this point, Dr. Menninger felt that things were looking promising. Isn't that right?
A. That their response was promising. Yes.
Q. Let's look at your notes later on, from the same day. Sort of a third of the way down, under "mental status exam," you say, "Thought content," and you say catastrophizing, worse-case scenario, and many pessimistic thoughts."
Do you see that?
A. I do.

Q. And so even though, at this point, Dr. Menninger had reported that HR and her boss had responded in a promising manner, she was still having catastrophizing thoughts, correct?

A. Yes. That's part of anxiety.

Q. And at this point, in fact, even leaving the house at all was a challenge for Dr. Menninger; is that right?

A. I believe so.

Q. And if we look at sort of the homework that you gave to Dr. Menninger at this time, number 6, under "plan," her homework was just to try to leave the house. Isn't that right?

A. Correct.

Q. Let's look at your notes from a couple of appointments later. These are your notes from the March 16th appointment that you had with Dr. Menninger?

A. Yes.

Q. And in the second paragraph, you noted that "Dr. Menninger continues to be assertive and proactive in her discussions with work, regarding their desire for her to be more visible and social."

Do you see that?

A. I do.

Q. "And their inability to think about another leadership style that she would be able to provide that would also be

beneficial."

Do you see that?

A. Correct.

Q. And this is because you and Dr. Menninger were talking about maybe other ways that she could work there as a pathologist without doing some of these things that involved social interaction, correct?

A. Correct.

Q. And again, under "homework," you set as a goal for Dr. Menninger, just to get out to the driveway at that point; is that right?

A. Yes.

Q. Let's go a couple of visits later. This is when you saw Dr. Menninger on March 30th?

A. Yes.

Q. And at this point you were treating with her about once a week; is that right?

A. I do -- I mean: Yes.

Q. And you noted in this note that Dr. Menninger still had some work stresses, and you noted, as well, that she was navigating some difficult client interactions; is that right?

A. That's what I wrote, yes.

Q. And did you have concerns about how those difficult client interactions may be impacting her anxiety?

A. I'm sure I did.

Q. And based on your experience at this point, having treated Dr. Menninger for about two months, why would it have been concerning that she would have difficult client interactions that may impact her underlying impairments?
A. Could you repeat that question?
Q. Sure. At this point you had been treating Dr. Menninger for about two months, right?
A. Yes.
Q. Why would it have been concerning to you that she would have had difficult client interactions at work, based on what you had observed of her symptoms at this point?
A. Well, I think difficult interactions are hard for all of us, so as her psychiatrists and therapists, I would have been concerned. And then in addition, if her diagnosis is the social phobia disorder, and it's an interaction with another person that didn't go well, that's going to be especially hard for Dr. Menninger.
Q. Because with her diagnoses, difficult interactions for people are especially challenging; isn't that right?
A. I wouldn't state it quite like that, no.
Q. Well, why is it, then, that a difficult client interaction would have been particularly concerning in Dr. Menninger's case?
A. Well, I think, again, it's a stressor that would impact any of us in our work environment. And so all I wrote,

actually, is work stressors remain, and she has recently navigated some difficult client interactions. So that's just a statement of what -- of fact.

Q. And let's look at what you gave Dr. Menninger as sort of homework from this visit. You suggested that Dr. Menninger -- you said, "Shift from CBT therapy for panic and social phobia to more art therapy"; is that correct?

A. Correct.

Q. And art therapy is something that you do as part of your practice; is that right?

A. I do.

Q. And Dr. Menninger was doing a fair amount of art therapy in her visits with you, correct?

A. She was.

Q. And you had seen that that had a beneficial effect for her, correct?

A. It was helpful in therapy, yes.

Q. And you were suggesting that she do more of that to help with her anxiety symptoms?

A. I did.

Q. Let's look at a couple of weeks later. These are your notes from an April 13, 2018, visit with Dr. Menninger?

A. Yes.

Q. And let's look again at the plan. Again, you recommended that Dr. Menninger continue art therapy, correct?

A. I'm sure I did, yes. Number 6.

Q. That's number 6, yeah.

And number 8, you also noted "coordination and communication with lawyer continues." And that would refer to coordination and communication with Patrick Hannon; is that right?

A. Correct.

Q. And you have another note from this same day, Dr. Kessimian? Do you see that, also, 4/13/2018?

A. Oh, that might be an error in documentation. It would -- to be honest, I wouldn't write two notes in one day.

Q. You would agree, though, that this was some time in April of 2018?

A. Most likely, yeah.

Q. And you noted, it's actually in quotes, that Dr. Menninger said to you, "I have found a sense of empowerment in advocating for myself and my strengths, and I am proud that my daughter is a witness to this."

Do you see that, Dr. Kessimian?

A. I do.

Q. And, in fact, Dr. Menninger was reporting to you how good -- how empowered she felt having advocated on her own behalf; is that right?

A. Correct.

Q. And this was having a positive impact on her daughter,

Maya?

A. I'm not sure if it was having a positive impact on her daughter, Maya.

Q. But she at least was feeling good that her daughter got to see this?

A. Yes.

Q. And this was in the context of her advocating for herself in her position at PPD; is that right?

A. Correct.

Q. You do note, though, that she's continuing to isolate at home. Do you see that?

A. Yes.

Q. And that she was continuing to lean on her husband for support?

A. Correct.

Q. Which you had noted, throughout her treatment, that you had concerns that her husband was kind of overly accommodating her need not to leave the house, correct?

A. Yes.

Q. And again, under "plan," you noted your recommendation that she continue art therapy?

A. Uh-huh.

Q. And as far as you recall, that was continuing at this time?

A. She was doing it with me and at home.

Q. And also under your plan, number 2, you wrote "support accommodations at work so that public speaking is not a core requirement or work responsibility." Do you see that?
A. Uh-huh.
Q. So this was you and Dr. Menninger continuing to advocate for this into April of 2018?
A. Yes.
Q. And then after that, you say, "e-mail both lawyer and patient with some response ideas and also options for patient to take leave."
A. Yes.
Q. And again, as we saw, even maybe ten or so days before this, you and Mr. Hannon were already talking about whether leave would be the next step, correct? We looked at that e-mail that you --
A. Yes.
Q. At some point in May of 2018, Dr. Menninger reported to you that she was planning to pursue some type of legal action against PPD; is that right?
A. I don't remember specifically.
Q. Let's look at your note from May 18, 2018.
A. Okay.
Q. And you see after -- describing to you some adjustments in medication, you say, under "history of present illness," you noted that Dr. Menninger was continuing to isolate at

home and that she made some type of decision with her lawyer, with Mr. Hannon, right?

A. Correct.

Q. And you say, "In a way, although there is sometimes resolution, it has been somewhat helpful."

A. Yes.

Q. And in fact, this was kind of a point where things were looking up a little bit for Dr. Menninger, correct?

A. Correct.

Q. And you noted, again, under your plan, you said number seven, "coordination and communication with lawyer," and again, that was with Mr. Hannon, correct? That was continuing?

A. Yeah. And again, to just be very clear, this was just under the plan because we had had communications at points in her treatment, but there was no regular communication with the lawyer.

Q. And let's look down under -- actually, towards the top of this page, under "safety." This was as of May 18th. You noted that Dr. Menninger denied suicidal ideation at that point, right?

A. Correct.

Q. Let's look ahead -- this is -- this is your note from June 8th of 2018.

A. No, that must be -- when did she take medical leave?

That would be the accurate date.

Q. And you noted, in fact, the end of your first paragraph -- actually, let's go through the first paragraph. You said "since last visit is on medical leave"?

A. Yes.

Q. And then you noted as well that Dr. Menninger had applied to several jobs?

A. Yeah.

Q. And that was at your recommendation that she was applying to jobs?

A. I can't remember if I specifically recommended that, but it did seem like this was going to be the next step, yes.

Q. That it would be the next step to apply for a new job?

A. Yeah, to think about what else would be a good fit.

Q. And at the end of this paragraph, you noted that suicidal ideation had resolved as of June 8th?

A. Correct.

Q. At some point, Mason Menninger, who is Dr. Menninger's husband, reached out to you specifically because Dr. Menninger had described having suicidal thoughts; is that right?

A. Correct. I believe there's an e-mail, if you want the exact date.

MS. MANDEL: Yes. And we are going to look at that e-mail. So we can look at that together.

This is agreed Exhibit 453.

BY MS. MANDEL:

Q. You testified a little while ago when Mr. Hannon was asking you questions about Mason Menninger contacting you regarding Dr. Menninger's suicidal thoughts?

A. Yes.

Q. And this is an e-mail exchange between you and Mr. Mekerri. It says October 15th. Would you agree that this was October 15, 2018?

A. Yes.

Q. And in this -- the first e-mail at the top of the page, Mr. Menninger wrote to you and said, "Thank you for reaching out, her demeanor changed on the phone with you."

A. Uh-hmm.

Q. And you would agree that your interactions on the October 15th, it sounds like were phone and e-mail. You didn't have an in-person visit with Dr. Menninger, correct?

A. Correct.

Q. And Mr. Menninger, in the next sentence, said, "Lisa is breakdown level emotional and very angry with me."

A. Uh-huh.

Q. And the long paragraph in the middle of the page, he reported "We mostly had a conversation that looped over and over."?

A. Correct.

Q. And then if we skip ahead to the middle of the paragraph, it says, "She then points out as evidence anything else that I do that is not directly involved in the case against her company."

Do you see that?

A. I do.

Q. And your understanding is that was referring to her case against PPD?

A. (Nods head.)

Q. "I am the caretaker of the family, cooking, cleaning shopping most of the stuff involving Maya, et cetera. I also have a new job, but I have no expectation that any of those roles would shift to Lisa given our current situation."

Do you see that?

A. I do.

Q. And that was Mr. Menninger reporting to you his attempt to sort of balance things with Dr. Menninger's expectations regarding his involvement in her claim against PPD, correct?

A. Could you say that one more time?

Q. Sure. So in this e-mail, Mr. Menninger was reporting to you that Dr. Menninger got angry with him and, in fact, expressed suicidal ideation after she felt he was doing things that weren't specifically pushing forward her case against PPD. Isn't that right?

A. I just took it more as he was reaching out to me to

explain why Lisa had had an emotional breakdown. That's kind of how I was interpreting this information, his perspective.

Q. And a couple of weeks later, Dr. Menninger reported to you that she was able to participate in an ultra marathon, correct?

A. Correct.

Q. And let's look at your note from that visit. So this was a couple weeks after you had heard from Mr. Menninger. This is your note from November 2, 2018?

A. Correct.

Q. And this is shortly before Dr. Menninger and her family relocated to New Mexico, correct?

A. I wasn't aware of that.

Q. Underneath where it says, "History of present illness"?

A. Correct.

Q. It says, "Since last meeting was able to compete in an ultra marathon with the support of her mother, daughter, and husband."

A. Uh-huh.

Q. "Initially, her social phobia symptoms were severe, as there was a large group of people at the start of the race, which activated her symptoms, but as the race progressed, she was able to find a solitary pace, and also continue to use her coping mindfulness skills."

Do you see that?

A. I do.

Q. And at this point, you were seeing Dr. Menninger, or treating her, you said, about every week?

A. I don't remember the exact frequency, but we saw each other often.

Q. But this was about two weeks after that October 15th e-mail from Mr. Menninger, correct?

A. Okay. Sure.

MS. MANDEL: Thank you. I have no more questions at this time.

THE COURT: Thank you.

Any redirect?

MR. HANNON: Very briefly, Your Honor.

THE COURT: Sorry, you're not done.

THE WITNESS: Oh, more?

THE COURT: There's two rounds. So there's the direct examination Mr. Hannon did of you and then the cross-examination by Ms. Mandel, and then there's one more round. So now Mr. Hannon can ask about anything that Ms. Mandel asked about. And then if she wants -- of course, it's not required. Mr. Hannon doesn't have to ask you any questions. And if he does, it's not required that Ms. Mandel ask you any more questions, but if she does, it's limited to whatever he asks about.

THE WITNESS: Got it. Thank you.

THE COURT: And then you're done. And then can you get up and leave.

MR. HANNON: May I proceed, Your Honor?

THE COURT: There's a reason that you went to medical school and not law school.

Go ahead.

MR. HANNON: Thank you.

REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. HANNON:

Q. Dr. Kessimian, was Lisa's exercise routine, was that something you spoke to her about during therapy?

A. At times.

Q. And did you have any view in terms of whether that was helpful or not helpful to her?

A. I think in general, exercise is seen as helpful for health.

Q. And I want to direct you to your treatment notes here. This is joint Exhibit 18. And I'm going to direct you here to page ending in 671.

And you looked at this on cross-examination. This was your meeting note with Dr. Menninger on February 16, 2018; is that right?

A. Yes.

Q. And, if you know, is it fair to say that this reflects some level of improvement for Dr. Menninger?

A. Yes.
Q. And she notes that her sleeping is getting better?
A. Uh-huh.
Q. Her extremes not as bad?
A. Yes.
Q. And as of this time, you had been providing her therapy; is that right?
A. Correct.
Q. You had also been -- you had also started medicating her; is that right?
A. Yes.
Q. And despite her fears, Dr. Menninger reported that she had been able to speak to both HR and her boss regarding the document for accommodations; is that right?
A. Correct.
Q. And I think we saw reference in a prior note that there was talk about Dr. Menninger concerning the importance of her advocating for herself; is that right?
A. Correct.
Q. Was that something that you urged her to do?
A. Yes.
Q. Why?
A. Again, I think overall for general well-being, being able to define what we need and then ask for what we need, whether that's from employees, employers, our partner, so on and so

forth, is an important skill to have, and so I did encourage her to advocate for herself.

Q. If we look at the next note here, on March 9, 2018, she describes for you here this business meeting in Cincinnati. Do you see that there?

A. I do.

Q. And you see here at the end that she notes to you that she was able to assert herself; is that right?

A. Correct.

Q. Was that something that, over the coming weeks and months as you treated Dr. Menninger, you continued to suggest that she should do?

A. Yes.

Q. You were asked a question on cross about any additional information that you -- you could have provided to PPD. Do you know if Dr. Menninger offered at one point for you to provide additional information if they wanted to see it?

A. I don't remember specifically, but she never denied any requests for any type of disclosure when I worked with her.

Q. Okay. And then just lastly, just in terms of the buckets, which I -- well, just to clarify in terms of the timing of those, I think you were shown a -- do you recall seeing an internal e-mail on cross-examination --

A. Uh-huh.

Q. -- from early February, where you were contemplating

reaching out to PPD to get more information?
A. I saw the -- this e-mail.
Is that what you're saying?
Q. Well, let me ask you a better question.
A. Okay.
Q. So these are the buckets that you ultimately provided specific recommendations for?
A. Correct. Correct. I didn't know they were called "buckets."
Q. That's my word. Sorry about that.
A. Oh.
Q. But just to be clear, this was sent to Lisa on February 6, 2018. Do you see that?
A. I do.
MR. HANNON: Okay. All right.
That's all I have, Your Honor.
THE COURT: All right. Any recross?
MS. MANDEL: No, Your Honor.
THE COURT: All right. Thank you very much. Now you're excused.
Next witness?
MR. HANNON: Your Honor, the plaintiff calls Paul Summergrad.
THE COURT: All right.
(The witness was duly sworn.)

THE DEPUTY CLERK: Can you please state your full name, and spell your last name for the record.

THE WITNESS: Paul Summergrad, S-u-m-m-e-r-g-r-a-d.

THE COURT: Go ahead, Mr. Hannon.

MR. HANNON: Thank you, Your Honor.

PAUL SUMMERGRAD

having been duly sworn, testified as follows:

DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. HANNON:

Q. Could you please introduce yourself to the jury.

A. Hi. Nice to meet you.

Q. Can you tell them a little bit about who you are and what you do.

A. I'm the -- my job is that I'm the Dr. Frances S. Arkin professor and chairman of the department of psychiatry at Tufts University School of Medicine and Tufts Medical Center in Boston where I'm psychiatrist in chief. And I'm also, separately from that, a professor of psychiatry and professor of medicine at Tufts University School of Medicine.

Q. And we'll go a bit more into detail on your qualifications in a moment, but first, just to orient the jury, how did you become involved in this case?

A. I believe you reached out to me at some point, I don't remember exactly when, asking if I might be able to assist with a matter.

Q. Okay. And were you asked to review certain facts and details concerning this matter?

A. Yes, I was.

Q. Okay. Are you being compensated for your time?

A. Yes, I am.

Q. And prior to today, have you ever served as a, sort of, so to speak, expert witness before?

A. Yes. Occasionally.

Q. Does this comprise a significant amount of your profession?

A. No. It's a small percentage of my activity.

Q. Okay. So when did you -- well, strike that.

Could you please walk us through your educational background?

A. So I went to college at the State University of New York at Buffalo, and then did premed work before medical school at the University of Rochester. And then went back to Buffalo for medical school from 1974 to 1978. Beginning in 1978 to 1981, I was what's called an internal medicine resident, meaning I was training in general adult medicine at what was then Boston City Hospital, but it's now known as Boston Medical Center.

I then worked for a year at the Bedford Veterans Administration Hospital as an internist from 1981 to '82, and then from 1982 to '85, I was a psychiatry resident at

Massachusetts General Hospital, which is one of the Harvard Medical School teaching hospitals. And then I stayed on faculty there for the next, approximately, 20 years. I still have a courtesy appointment at Mass General, but I don't practice there or teach there.

And in addition, I've done what's called psychoanalytic training at the Boston Psychoanalytic Society and Institute. That started around 1983 and I don't think I actually finished until 2009.

Q. Okay. And in terms of actually working as a doctor, can you walk us through that?

A. Yeah. I mean, I've worked as a doctor since, you know, graduating from medical school. I work under supervision as a resident. So I did a lot of general medical care, a lot of acute neurologic care at Boston City Hospital, Boston Medical Center. And then continued doing a lot of medical related care within the context of psychiatry, both while I was a psychiatry resident, and then after my -- and beginning my employment at Mass General. So I worked at Mass General initially as the assistant director of the inpatient service for two years, and I also worked at what was then the Erich Lindemann Mental Health Center, which had inpatient beds under the Commonwealth of Massachusetts for two years, and then in 1987, I became the director and chief of inpatient psychiatry at Mass general. I did that around until I guess

1998 or 1999 and then took on some additional responsibilities across what was then called the Partners Healthcare System. Now it's called Mass General Brigham.

And in 2004, I continued to do clinical practice throughout this time, taking care of patients, taking care of inpatients, outpatients in the emergency room, supervising other physicians when they do that. And then from 2000 to 2004, approximately, 1999 to 2004, I was the chief of psychiatry and the executive vice president for medical affairs and chief medical officer as what's now known as Mass. General Brigham Salem hospital. So I was overseeing the psychiatric services there. And then I was recruited to come to Tufts in 2004.

And I've continued to see patients throughout that time. I take care of people in my outpatient practice, a lot of people who have anxiety disorders, mood disorders. I've written a lot about people who have medical illnesses and psychiatric illnesses in the way they interact with each other. I have attended on the inpatient services, consult services, emergency room, been on-call, backed up our residents, supervised residents to this day throughout my time at Tufts.

Q. Okay.

A. And as well as overseeing the doctors in my department.

Q. Do you still see patients today?

A. Yes, I do.
Q. Okay. And I think I heard you mention that some ever your work has involved mood disorders. Did I hear that right?
A. (Nods head.)
Q. Yes?
A. Yes, it has.
Q. Okay. You got to say it out loud.
A. Yes. I'm sorry.
Q. No worries.

Can you explain what a mood disorder is?

A. Yeah. So psychiatric illnesses are divided up into different kind of categories. One of the classic categories is disorders of mood. So people can have various kinds of changes in their normal mood, either where they're very depressed, sad, morose, or, in some cases, people can feel quite energized, activated, what is sometimes referred to as mania or hypomania. So those are the broad bucket of mood disorders.

Sometimes people can have mood disorders because they have a stroke. Sometimes people can have mood disorders because they have an endocrinologic disorder. Sometimes it can happen because they have a very strong family history of some type of illness that has been -- with a combination of other social or personal events, has led to the onset of

mood.

And that can also affect thinking. It can also be associated with anxiety symptoms. And likewise, people can have anxiety symptoms that are also associated with mood disorders.

There's a lot of what we sometimes call "co-morbidity" in psychiatric illness. That's partially because our diagnostic system is not as good as it needs to be, and partially it's probably just the way we're built and we're wired.

Q. Would anxiety disorders fall within the umbrella of mood disorders?

A. No. They're really separate disorders.

Q. In treating patients, do you also have experience treating patients with anxiety disorders?

A. Yes, I do a lot.

Q. Where would depression fall? Would that fall in a mood disorder?

A. Depression really falls more as a mood disorder. Anxiety is really more an anxiety disorder.

There are certain disorders which used to be an anxiety and now have kind of been carved out from that or separated. But there's a fair amount of overlap. So, for example, somewhere between 20 and 40 percent of people who have anxiety disorders may develop mood disorders. People

who have mood disorders may develop anxiety symptoms or may have anxiety symptoms with them. So you have to -- nature doesn't always get cut at the joints with this.

Q. I think I heard you mention that you also published articles; is that right?

A. Yes, I do.

Q. And just generally speaking, in what types of subjects have you been published?

A. Everything from health system design, to onset of mood disorders secondary to strokes, to strategic planning in psychiatry, to the role of inflammation, inflammatory disorders in the onset and development of psychiatric illness; through things related to suicide and health system design, hospital organization, the development of what are so-called medical psychiatric units, which is similar to the units that I both designed at Mass. General and also have overseen at Tufts.

Q. Okay. And do you hold any certifications?

A. Yes.

Q. What certifications?

A. So I'm board certified in internal medicine. I'm board certified in psychiatry. I'm board certified in what's called psychosomatic medicine or -- it's a subspecialty of psychiatry, psychosomatics. I was board certified in geriatric psychiatry, but I let that certification lapse

because I really wasn't doing a lot of geriatric psychiatry at the time when I would have had to take that exam again. And I'm a graduate of the Boston Psychoanalytic Institute, so I have whatever certification, they basically made me a graduate analyst.

Q. Okay. And during your professional career, have you been involved in any professional organizations or societies?

A. Yes. Several.

Q. Which ones in the field of psychiatry?

A. So I was very involved early in my career with the Massachusetts Psychiatric Society and was president, I think, 1980 -- 1998 to 1999. I was president of a group called the American Association of Chairs of Departments in Psychiatry, which is -- basically represents all the medical school chairs in the United States and Canada. I was president of the American Psychiatric Association, which is the umbrella organization for all psychiatry in the United States, from 2014 to 2015, and I'm currently the secretary for finances and a member of the executive committee of the World Psychiatric Association.

Q. Okay. Enough about you.

What, if anything, did you do to review the information and facts relevant to this case?

A. I reviewed medical records, materials that were sent to me. I reviewed some relevant psychiatric literature. I also

had the opportunity to meet twice with Dr. Menninger via Zoom, once in 2020 and once in 2022.

Q. Okay. And these types of sources of information, are these the types of information that you would normally use in your profession to reach conclusions concerning a person's mental health?

A. Yes.

Q. Their abilities and capabilities?

A. Yes. I mean, and things that didn't come in here, I read notes from people. I didn't actually speak to those practitioners. So that might come in under ordinary clinical practice. There might be additional laboratory information that wasn't in these records that would come in, in the ordinary clinical practice, so -- but other than that, yes.

Q. Okay. I'm going to start by showing you here Joint Exhibit 28.

And Dr. Summergrad, so this is a request for an accommodation form here completed by Dr. Kessimian -- let me pause. I'm sorry. Go ahead.

A. It's not showing on the screen.

Q. Excuse me, I didn't press the button. My mistake.

So Dr. Summergrad, this is the request for accommodation form that we looked at earlier today with Dr. Kessimian and I want to walk you through some of these and ask you some questions here.

So first, with respect to the first question in box number 1 here, it asks, "Does the employee," here Dr. Menninger, "have a physical or mental impairment that substantially limits one or more major life activities; a record or past history of such impairment; or being regarded as having a disability without the consideration of mitigating measures."

Do you see that?

A. Yes, I do.

Q. And do you see that Dr. Kessimian answered yes?

A. Yes, I do.

Q. `In your professional opinion, based upon your experience and your review of the facts here, do you agree with Dr. Kessimian?

A. Yes, I do.

Q. And with respect to the second box here, you see Dr. Kessimian reflects that Dr. Menninger had a mental impairment. Do you see that?

A. Yes.

Q. And in your opinion, do you agree with that?

A. Yes, that's correct.

Q. Okay. And then with respect to Dr. Menninger's mental impairment, in your opinion, what was Dr. Menninger's mental impairment as of the date that this form was completed on January 31, 2018?

A. So I think that she had, in my view at that point, two mental impairments. One was that she clearly had social anxiety disorder and had had that since childhood. And the second was that she had panic disorder and then had that since adolescence.

I was -- given the primacy of the social anxiety disorder, I didn't add in generalized anxiety disorder. I thought that that was more, if you will, secondary to the primary condition. And the primary condition was and is social anxiety disorder.

Q. Okay. Let's try to unpack that a little bit here. What is a disorder?

A. So in general, in medicine, a disorder is a condition usually accompanied by symptoms that tend to occur more frequently together than not. So, for example, if you have heart disease, you may have shortness of breath, chest pain, difficulty going upstairs, something like that. Those kind of things tend to track together. They often have a specific cause, although the cause may sometimes be unclear, like, for example, fatigue, migraines. There are many conditions where we don't know exact causes, and they then have a natural history course, a tendency to respond to conditions. That's the first part.

The second part is they have to cause suffering. They have to cause disability, suffering. Maybe not

disability exactly as you'd use it in an employment context, but some degree of symptoms that are persistent and effect people, even if at times those disorders go into remission. Some disorders are acute. They last for a short period of time, a fever and an infection may come and go. Some disorders, hypertension, diabetes, asthma, many other disorders, anxiety, can be chronic conditions, and some of them are lifelong conditions.

Q. And the mentioned social anxiety disorder. Can you explain to the jury what that is?

A. So social anxiety disorder is a disorder that tends to -- it's associated with intense anxiety associated with certain kinds of social or performance circumstances. People with social anxiety have difficulty introducing themselves to other people, performing in front of different people, giving a speech in front of other people. They have -- they might be viewed externally as being intensely shy or reclusive. They have an intense fear, generally, of being exposed or humiliated, so that if they're seen, they're worried that something about them will be shown to be present which would be embarrassing or humiliating. Sometimes people are very concerned, for example, about sweating. Sometimes people are very concerned about their gaze and somebody else noticing that they're looking at them and that somehow people will be aware of that. It generally comes on in early adolescence.

It can come on as early as early childhood, so three, four, five years of age. It can often be seen in things like separation anxiety, kids who have a hard time going off to school. So it's kind of at one extreme of a kind of social -- people who are extraordinarily gregarious and love to be in the public eye, and you have people who, at the other extreme, really, really don't like that. And Dr. Menninger is in that extreme and that's why you'll find people with social anxiety disorder.

Q. You also mentioned panic disorder. What is that?

A. So panic disorder is -- panic attacks -- let me talk about panic attacks and then I'll describe what panic disorder is in that context.

People can have panic attacks due to a variety of different disorders. Panic attack is when you have a sudden out-of-the blue of heart racing, shortness of breath, lightheadedness, vertigo, fear, fear of going crazy, fear of having some acute medical problem. It is intense, lasts somewhere per episode around 5 to 15 minutes, and can come on out of the blue.

Sometimes people have multiple episodes like this, but it's not clear what's provoking it. Sometimes it is clear, it can be seen in the context of something like a social anxiety disorder. Sometimes it's a setting of something else that somebody else has, what we would call a

phobia around, some stimulus in the environment that makes them really, really uncomfortable. For some people, for example, it's being in shopping malls, elevators, bridges, tunnels, any place where they feel like their means of safe escape is limited.

So panic disorder is when you have panic attacks, without it necessarily being clear what it occurs in relation to.

Now, Dr. Menninger has anxiety and panic in relation to social situations. She also had an adolescence that emerged as something that was also occurring somewhat de novo, in other words, without a particular percipient.

Q. In diagnosing disorders in general and more specifically the ones that you've talked about, how does a psychiatrist such as yourself go about doing that diagnosis?

A. Well, hopefully carefully and you listen to people. You gather as much information as you can. In general, you want to hear directly from people both what is bringing them in to see you and then what their history has been. And you want to make sure you don't get tunnel vision and just focus on what it is that they're bringing. You want to make sure you go through the rest of their medical history, any other psychiatric symptoms that you may or may not have had, have they had episodes, for example, of head trauma, of concussion, febrile seizures. Have they had episodes of

other kinds of illnesses that could effect their brain or some other part of their body that could produce other symptoms, because people don't come to the doctor just with their mental symptoms and they leave their body behind. They bring the whole thing with them and you have to make sure you gather all of that.

Sometimes it depends on the circumstances. You may need to gather information from past medical records, from people's families, if they'll give you permission to do that. And other times, obviously, other medical records, laboratory studies, et cetera. So the imaging studies, you know, CT scans, MRIs, et cetera.

Q. Okay. Let me just jump in there. In reviewing the information that you described, is there some kind of diagnostic criteria that's regularly used by experts in your field?

A. Yeah, so that's generally either the diagnostic and statistical manual of psychiatric disorders, which is now in its fifth edition. There's a slight edit, what's called a text revision, that just came out. But basically it's in its fifth iteration.

People also will use the *International Classification of Diseases*, which, in the US, is in its tenth edition, and internationally, it's in its eleventh edition. And those are very similar in terms of -- now, again, those

are not, in and of itself -- they're necessary and important to kind of put things in certain kinds of groupings, but they don't suffice for clinical examination and/or other kinds of medical literature.

Q. Understood. And in reaching the diagnoses that you did with respect to Dr. Menninger having social anxiety disorder and panic disorder, did you rely at all upon the diagnostic criteria set forth in the DSM?

A. Yes, I did.

Q. And just generally speaking, how -- how did the diagnostic criteria and the DSM compare to the information that you gathered in your --

A. It's very, very, very close. I mean, she has -- speaking first about social anxiety disorder, she has many of the core attributes and has had that since childhood, difficulty in being in certain kinds of social situations. Fear, anxiety, intense anxiety, panic associated with them, remaining somewhat distant from other kinds of settings where those kinds of feelings would come about. And in addition, you know, particular concerns around performance and also sweating.

Q. Why do you mention sweating?

A. Well, one of the things that Dr. Menninger would do when she presented was that, for example, when she gave a presentation at work, she would put Kleenex under her arms,

in her axilla, what we would call the armpits because she would sweat and she didn't want that to be visible to other people. And that was a way of basically protecting her sense of pride in a public situation and also preventing some of her symptoms from being very visible.

Q. And from your clinical perspective, did that factor ring true in terms of your opinion?

A. Yes, it did.

Q. And why is that?

A. It's one of the concerns -- it's a specific concern that people have with social anxiety disorders around -- it around sweating and it's around public appearance. We all have concerns about how we appear in public. That's natural and normal, even as -- and again, this is an extreme version of that, in terms of its intensity.

Q. Looking back here at the form completed by Dr. Kessimian, you see here that she had included in her document, there's a reference to agoraphobia and generalized anxiety disorder. Do you see that?

A. Yeah.

Q. Do you disagree with that?

A. It's not that she doesn't have some elements of generalized anxiety. Generalized anxiety disorder is -- you know, it's where you're constantly a little bit of tense and worried about things all the time. I mean, you know, just

you're constantly a little bit on edge, but it doesn't cause overwhelming kinds of anxiety. It doesn't cause the kind of physiologic symptoms, the heart racing, the shortness of breath, the lightheadedness that I was describing. And generally, people, if they restrict activities, they do it a little bit, they don't it to an extreme degree. It's not like what we would call, again, a phobic avoidance.

You know, there's some people, for example, who won't travel over bridges. That's their -- or they won't go on to a plane. But they can do other kinds of -- they can talk -- they can talk in front of people. So again, there are specific kinds of elements.

And then in terms of -- is there something else in relation?

Q. Yes, I'm sorry. I took away the highlight. I'm sorry. The generalized anxiety disorder?

A. Yes, that's the generalized anxiety disorder. So she has some of those elements again. I guess I'm a lumper rather than a splitter. That's a term we sometimes use in medicine, do you put things under one diagnosis, or do you separate them out. So I don't think that's wrong, it's just not what I would focus on.

Q. Very good. Directing your attention to further down here in what Dr. Kessimian wrote, in the next sentence, she notes that "the disability significantly interferes with Lisa's

ability to perform major life activities, such as thinking, concentrating, communicating and working."

Do you see that?

A. Yes, I do.

Q. Do you agree with that?

A. Yes.

Q. In addition to the list there, how, if at all, do Dr. Menninger's mental impairments impact the life activity of breathing?

A. So when people have -- is it okay if I expand a little bit on anxiety and put that in context to breathing?

Q. Sure.

A. Well, anyway, anxiety is a normal thing, like pain. We have anxiety as a way of protecting us from danger. So, you know, life is filled with dangers. If there's a car careening towards you and you want to see it, you want to do some -- you become very anxious and alert, so you activate various parts of your nervous system, your sympathetic nervous system, your stress reflexes, cortisol, et cetera, so you can respond to danger.

And one of the things that we're most sensitive to in the world is anything that affects our breathing, because you don't breathe for a few minutes, you're going to die. You know, the brain is intensely dependent on oxygen, and we need to breathe in order to have oxygen. The challenge is

that -- so what happens is with panic experiences of the kind that Dr. Menninger has is one of the core cardinal elements is you get an alarm. The alarm system that goes off when you can't breathe, but it goes off in response to other kinds of stimuli. So it's not going off because there's no oxygen. It's going off because, again, different people, but in this case social situations and social settings and then becomes breathless. So breathing becomes hard in those circumstances and it may take some time to catch one's breath thereafter.

Q. And these, the impact on breathing, thinking, concentrating, communicating, working, were these -- were these impacts that existed constantly, or were they more episodic?

A. No, they tend to be more episodic, although they can have anticipatory elements, and they can have post-attack elements. So the anticipatory elements are if you knew that every time you were walking down the street, a bear was going to jump out of the woods, pretty soon you'd stop walking down the street. That's anticipatory anxiety. And so people begin to notice, "I'm having these attacks when I'm in, let's say, I'm in an elevator." People will avoid going in elevators. Or I'm having these attacks when people are speaking, so they will avoid those kinds of things. And if you know you have to be in those settings, you kind of have to gird your loins and get ready for what may feel like a

battle situation, a complex situation.

These episodes, for anybody, can make them feel enervated, depleted. They're very intense. You're taking your whole sympathetic nervous system and you're putting it on to a kind of hyperdrive, and you're discharging it for 5, 15, 20, 25 minutes, and afterwards, people understandably feel washed out. So, yes, they're acute, they don't happen all the time. But they're not just the event, they're things around the event, both before it and after it.

Q. And with respect to Dr. Menninger in particular, were there certain events or activities that triggered those occurrences?

A. Yes.

Q. And what are they?

A. I'm sorry?

Q. What are they?

A. So introducing herself to people that she wouldn't otherwise know, especially if it was groups of people or a range of people, but people that she otherwise was not familiar with.

This goes back, actually, to childhood, even, you know, introducing herself to playmates and kids at school when she was very, very young. And it also involves any situation where she might be subject to being under public awareness, public display, speaking, presenting herself,

where she'd be under the spotlight. This is an anti -- people don't want to be under the spotlight. They want to kind of be hidden away. They don't want to be seen in that way. And that's -- those are the kinds of things that would generate this for people.

Q. Looking here at -- still at Dr. Kessimian's note, she reports, "Despite these limitations, Lisa reports that she has historically fulfilled the essential functions of her job without accommodation."

Do you see that?

A. Yes, I do.

Q. Is that in any way consistent with your opinion as to Dr. Menninger's mental impairment?

A. No, it isn't.

Q. Can you please explain to us why?

A. Because she found ways to -- she didn't request an external accommodation. She found ways of dealing with this. Part of this was preparing herself. Part of it was the frequency or the infrequency with which she would do it. Part of it was whether it was focused around people that she knew, versus people that were strangers to her, or people that she was just being introduced to. And part of it was use of small amounts of medication to help take the edge off of the anxiety.

Q. In your opinion, was it difficult for Dr. Menninger to

engage in every type of interpersonal interaction?
A. No. I don't think so. Because there was certainly -- you know, with her family, that was not the case, with people that she knew well. When her activities were focused around technical or professional activities that were close to her expertise in terms of quality evaluation, laboratory function, and others, that would -- that would not be as much of an issue as, again, being introduced to a group of people or having to be introduced to and speak to a group of people that she didn't know.
Q. And is that -- is that unusual for this type of mental impairment?
A. No, it's actually quite typical.
Q. I'm now going to show you here exhibits -- strike that. We'll get back to that. I'll show this to you later, since we're almost at lunch.
Would it be -- would it be inconsistent with your opinion that Dr. Menninger's supervisors had historically marked her as being an excellent collaborator?
A. No.
Q. Why not?
A. Because, again, it would depend on the context, the setting, the relationship, the duration, and the numbers of individuals, and the kind of tasks that were associated with that. So, again, if there were things that were close to her

core skillset, or as a physician, if they were with a group that she knew well, if they were within a small group that was, again, known and trusted, she would be able to do those things. You know, and again, people, you know -- she was able to utilize her skills and also, you know, it helps when you can utilize your intellectual skills, you know, in a particular set of tasks, and that helps, as well.

Q. Were public speaking activities, were those particularly difficult for Dr. Menninger?

A. Yes, and they are classically for people who have social anxiety disorder. It's a hallmark of it.

Q. Would that mean that it was impossible for Dr. Menninger to engage in public speaking activities?

A. No, it was possible, but with, again, a great deal of preparation and strain and recovery time.

Q. Would it at all be inconsistent with your opinion concerning Dr. Menninger's mental impairment to learn that when people at PPD saw her doing presentations, they thought she was great?

A. Not at all.

Q. Why not?

A. Because, again, if one is able to organize, again, within a setting that is trusted, where there's enough time for preparation -- but let me -- if I could, reasonable, by analogy. If somebody has heart disease, they may be able to

walk a block, or they may be able to walk a flight of stairs. If you ask them to walk two or three flight of stairs, they may not be able to do it. So you have to know kind of what the scope is and the range of what people are capable of doing. And again, within those settings and a lot of preparatory time, she was able to do that, by all of their reports, quite well.

MR. HANNON: Your Honor, I'm switching on to another topic. Do you want me to stop?

THE COURT: Keep going. You have two more minutes.

MR. HANNON: Okay. Great.

BY MR. HANNON:

Q. I'm going to show you Joint Exhibit 48. And you recall, this was one of the documents that we looked at today with Dr. Kessimian?

A. Yes.

Q. Okay. And have you -- is this one of the documents that you reviewed in preparation for your work in this case?

A. Yes, I have.

Q. Okay. And I'm going to look here at the second page. And you see here, Dr. Menninger -- I'm sorry, Dr. Kessimian, she has provided a number of proposed accommodations. Do you see those?

A. Yes, I do.

Q. Okay. So we see one there on page 2 and then the

rest there on --

THE COURT: I'll stop you here.

MR. HANNON: I knew it.

THE COURT: Yeah. Good, you knew when it was going to be 1 o'clock.

But look, we got the document in, he's ready to go, the jury recognizes the document. When you return, you don't have to lay that foundation. They'll be oriented.

Ladies and gentlemen, so take a break for lunch, 1:00 to 2:00, we'll resume at 2 o'clock. Thank you for your attention. Don't discuss the case among yourselves or with anyone else.

All rise for the jury.

(The jury exits the courtroom.)

THE COURT: All right. So we'll resume at 2:00. See you then. Just before, so we can get the jury at 2:00.

And I'm going to give you that back, Mr. Hannon. I don't need that anymore.

MR. HANNON: Thank you.

(Court in recess at 1:01 p.m.

and reconvenes at 1:59 p.m.)

THE COURT: Please be seated.

Dr. Summergrad, you can take the witness stand.

Kellyann, you can go get the jury.

(Jury present.)

THE COURT: Go ahead, Mr. Hannon.

BY MR. HANNON:

Q. Dr. Summergrad, I would like to show you Joint Exhibit 58. This here is a copy of Dr. Menninger's 2016 performance review. I just want to walk you through some of the information on here and see how that compares to your opinions.

I direct you here to the highlighted part with the goal of, "To collaborate with lab, data management, and finance to establish and standardize Global Lab metrics for test volumes, supply costs and revenue generated per test/test category."

Do you see that?

A. Yes, I do.

Q. And you note there that she was rated as "highly effective"?

A. Yes, I do.

Q. Do you see there, it notes "excellent collaboration with the GCL teams"? Do you see that?

A. Yes. I do.

Q. Okay. Is that in any way inconsistent with your opinion concerning Dr. Menninger's mental impairment?

A. No, it isn't.

Q. Okay. The next one here, and you see part of the next goal, the second sentence reads, "Work with SciTech team to

create validation plan upon instrument delivery to lab."

Do you see that?

A. Yes.

Q. You see there, again, she was rated "highly effective" there, right?

A. Yes.

Q. And in terms of the -- excuse me -- in terms of the comments by Mr. Mekerri, you see the second sentence reads, "Lisa has been leading the effort successfully."

Do you see that there?

A. Yes, I do.

Q. Is that in any way inconsistent with your opinion of Dr. Menninger's mental impairment?

A. No, it isn't.

Q. Next page here, see the goal I've highlighted: "Collaborate with QA to identify and address GCL CAP/CLIA/NY compliance and quality gap."

Do you see that there?

A. Yes, I do.

Q. Okay. And do you see she was rated "highly effective"?

A. Yes, I do.

Q. Is that consistent with your opinion concerning Dr. Menninger's mental impairment?

A. Yes, it is.

Q. Next goal, "Collaborate with task force and leadership

teams to clarify and redefine AP strategy and project plan, identify gaps and propose solutions to meet client expectations."

Do you see that?

A. Yes, I do.

Q. And, again, she was rated highly successful?

A. Yes. Highly effective.

Q. I'm sorry. Highly effective. Thank you for correcting me.

And you see the notes reflect the "AP task force has been a great initiative for cross departmental collaboration" and it goes on to say, "Lisa is exploring collaboration with partner."

Do you see that?

A. Yes, I do.

Q. Is any of that inconsistent with your opinion concerning Dr. Menninger's mental impairment?

A. No, it isn't.

Q. Going back to the document that we started before lunch -- so this, again, is Joint Exhibit Number 48. So this was Dr. Kessimian's suggested accommodations; is that right?

A. Yes.

Q. Okay. And you've -- you've reviewed these suggested accommodations in the course of your work in this case?

A. Yes, I have.

Q. Okay. And do you have an opinion as to whether or not these accommodations would have assisted Dr. Menninger with respect to the side effects of her mental impairment?
A. Yes, I do.
Q. And what's your opinion?
A. I think it would have been helpful to her.
Q. How so?
A. To the extent that it would have placed some limits on the number, the frequency, the exact role that she would serve in, I think that it -- it would, obviously, depend upon exactly what she was being asked to do at any given moment. Based on the materials here, I think it would be helpful because it would have put some parameters around that.
Q. In your opinion, did Dr. Menninger need an accommodation in order to continue doing her job?
A. No, I don't think she did.
Q. I'm now going to show you another document. This one is Joint Exhibit Number 28. So this was the form we were looking at earlier, right?
A. Yes, it appears to be.
Q. Okay. And now I want to direct your attention to the -- the proposed accommodation in Box 7. And do you see here Dr. Kessimian's recommendation there that any social interaction or public speaking incident to her role be minimized to the extent possible?

A. Yes, I see that.
Q. Okay. In your opinion, Doctor, would that have been an accommodation that would have been helpful to Dr. Menninger given her mental impairment?
A. It would have been helpful, yes.
Q. How so?
A. Again, it would have limited the number, the intensity, the roles that -- the frequency of these interactions in these -- in these situations as proposed.
Q. Directing your attention to the next sentence in that box or button, Dr. Kessimian wrote, "To the extent that social interactions and/or public speaking is deemed necessary for Lisa's job, I recommend that a plan be developed for these activities in consultation with me or another qualified healthcare provider."

Do you see that?
A. Yes, I do.
Q. And in your opinion, would that -- would that have been helpful to Dr. Menninger given the mental impairment that you've talked about?
A. Yes, it would be.
Q. How so?
A. Again, definition, clarity, understanding what elements of her job were remaining the same or were changing, knowing something about, again, the frequency and the extent of the

social interactions that would be required of public speaking, all of that would allow her to both plan and be helpful in the management of her day-to-day activities on her job.

Q. When you say it would have helped her plan, could you help the jury understand why --

A. So as I was -- mentioned earlier, the -- there's several different phases to the response to social anxiety disorder. One is the anticipatory phase, and this is true with many anxiety disorders; a second is the actual event itself; and then a third is the recovery phrase.

Knowing what the tasks were, how frequent they were, who would be there, numbers of people that would be there, et cetera, all of those would allow her both to anticipate correctly and assess and also be able to manage those events, as she had been managing various forms of public speaking within her existing role, and then, also, to recover from -- from the intensity of the anxiety that she would likely have experienced and had experienced in similar situations before.

Q. And when you say it would have helped her manage, in your opinion, what, if any, sort of coping mechanisms had Dr. Menninger sort of developed to help her manage?

A. Well, I think the first was knowing when things would occur, knowing what role she would play, what role others

might play, whether she was presenting, whether somebody else was presenting, and the numbers of individuals. So all of those things would allow her to set a framework around what she was about to do.

And then, obviously, depending upon what those things were, then it would define how she would experience the actual event itself and the aftermath of the event.

Q. Looking back here at Dr. Kessimian's suggestion, in your opinion, was -- was a formal plan needed in order for Dr. Menninger to -- to have some benefit from this planning you've talked about?

A. Can you help me understand what you mean by a formal plan?

Q. Sure. Did there need to be a single comprehensive document laid out that said with precise detail this will happen then, this will happen then, this will happen then?

A. I think it would depend on the set of circumstances and the specifics that she was required to -- if, again, they were modest, less likely; if they were more extensive, yes.

Q. How about just additional communication with Dr. Menninger concerning these expectations? In your opinion, would that have been helpful?

A. It would have been extremely helpful to her.

Q. Why?

MR. CURRAN: Objection.

THE COURT: What's the objection?

MR. CURRAN: This is going into the area that Your Honor ruled on summary judgment.

THE COURT: What's the question, Mr. Hannon?

MR. HANNON: The question concerns increased communication.

THE COURT: I think, for context, it's overruled. You can answer.

THE WITNESS: So there are two different pieces of this. One piece goes to the kind of heart and deepest experience of having social anxiety, which is fear of being exposed and humiliated.

So anything that is experienced as potentially exposing one or their disability -- their tendency to sweat, their feeling that they may be talking in a way that's not clear, stammering, feeling overwhelmed -- anything that would help clarify that would both be useful in general -- in other words, for the planning purposes -- but it would also reduce the sense of self-criticism and self-recrimination that often attends people who have social anxiety.

What do I mean by that? People who have these kinds of conditions, many people often feel like they should be able to manage things. "What's the matter with me that I can't manage things? People will see that I'm anxious or that I'm stammering or that I'm sweating or that I'm looking

in an odd way."

And all of those things will help people feel worse. It intensifies their sense of self-criticism and diminishes their sense of well-being in those -- in those settings.

So communication has two functions here. One is to let people know, "We hear this. We understand this. We -- this is what we're expecting of you. We're not holding back this information from you or criticizing you for having a condition; b, this is what we expect you to do." Both of those things would be helpful.

BY MR. HANNON:

Q. I'm now going to show you Joint Exhibit 115. And just to orient you, this is an e-mail chain. I'm going to direct you to a specific portion of it. Excuse me.

I direct your attention here to the bottom. Can you see here Dr. Menninger writes, starting in the second sentence, "While you keep saying that you are committed to engaging in a dialogue with me, I feel like you just keep twisting my doctor's words and refusing to answer any of my questions."

Do you see that there?

A. Yes, I do.

Q. Okay. From a -- from the perspective of a psychiatrist with knowledge of Dr. Menninger's mental impairment, is that

statement significant to you at all?
A. Yes, it would be. I mean, I think it would make most people feel uncomfortable, but it certainly would make sure with social anxiety in an important work situation feel anxious and worried and concerned.
Q. And directing your attention to the next sentence, she -- I'm sorry. Skipping ahead to the last sentence, she writes, "If we can talk about the specific tasks that Hacene wants me to do, I feel like we can come up with some kind of a solution that works."
Do you see that?
A. Yes, I do.
Q. Okay. And in your preparation for testifying, were you aware that Dr. Menninger had made repeated requests for additional information concerning items on certain buckets?
A. Yes, I am.
Q. And in your opinion, would providing that additional detail that Dr. Menninger requested, would that, in and of itself, help accommodate the impact of her disability?
A. Yes. I think it -- clarity and communication would have helped her.
Q. Are you aware that Dr. Menninger took a medical leave of absence in early June of 2018?
A. Yes, I am.
Q. Okay. And in the course of your work in this case, did

you make a determination as to how, if at all, her -- her mental impairment had changed since January 2018 and when she took her medical leave?

A. Yes, I did.

Q. And what is your opinion?

A. So over the course of the spring, particularly as she began to get more worried and concerned about her livelihood, her work, and her ability to resolve the matters that she was attempting to deal with, she began to develop symptoms of a major depressive disorder.

And those symptoms included, by the time we got to -- there were several. She wasn't sleeping. She wasn't eating well. She was increasingly worried in a different kind of way, worried in a self-critical kind of stage.

She worried that she had put herself in a situation where her livelihood was going to be affected and her family was going to be affected. And she became increasingly suicidal and had substantial thoughts of self-harm.

Q. You mentioned major depressive disorder. What is major depressive order?

A. So within the broader category of mood disorders that I talked about, there are depression, as a kind of general category, as one of the two major categories, mania being the other.

And within depression, there are a variety of

different kinds of depressive orders, and one of them is called major depressive disorder, or major depression. It has certain elements and characteristics, and that's what I believe she developed in the course of the late spring.

Q. In your opinion, was it medically necessary for Dr. Menninger to take leave from her employment in early June 2018?

A. Yes.

Q. Why?

A. Because she was -- despite highly competent psychiatric care and despite medication, she was getting worse, and she was feeling increasingly unsafe and unwell; and she needed a more sustained, engaged environment to support her through that and to allow her to begin to regain some sense of floor underneath her.

Q. Now, Dr. Summergrad, in your opinion, did Dr. Menninger's preexisting mental impairment, did that in any way contribute to her development of major depressive disorder?

A. Well, as I mentioned earlier, overlap between psychiatric symptoms or syndromes is more common than not. Certainly with people who have anxiety disorder, somewhere between 20 and 40 percent of them will go on to develop depressive disorders, major depression.

And so that is a risk factor. It's a known risk factor for the development of major depression, particularly

later in life.

Q. In your opinion, did PPD's actions play any role in Dr. Menninger developing major depressive disorder?

A. Well, I think she felt like she didn't know where she was headed. She didn't have clarity in her mind about whether -- whether and in what way her job was changing. I think she felt in particular that -- that they were looking to have her exit the organization, and I think she began to frankly beat herself up somewhat around the fact that she had taken the risk of exposing her disability.

And so I think she felt that, despite the fact that it was important for her to disclose her disability, that it led to reactions to her, which then made her feel even more negatively towards herself.

And it was kind of like a -- you know, again, if a core concern of social anxiety is a fear of being humiliated or viewed negatively, and she began to feel like she was experiencing that from the environment at work around her, that kind of is confirmatory in a negative way for her, rather than a positive way.

Q. And more specifically, how did those feelings that you described in terms of the company wanting her to exit from the company, how, if at all, did that play into her underlying mental impairment?

A. Well, I think, again, it activated the very concerns she

had about being humiliated, and it also created real worries about her financial well-being and the well-being of her family and she's obviously very concerned about her family.

Q. I heard you mention a moment ago something about Dr. Menninger having disclosed her disability. In your opinion, was there anything about the fact of Dr. Menninger telling her employer about her disability that was significant here?

A. I'm not sure what you mean by significant.

Q. Well, in terms of her reaction when she subsequently had those feelings of rejection.

A. Well, I think that that, again, if a cardinal element of -- of social anxiety is fear of being seen and exposed and humiliated, and if one exposes oneself, one puts oneself in a vulnerable situation -- so it's a risk. And she was taking a risk, not just a risk that was a risk in the normal course of events, but a risk psychologically for her, as well.

Q. Were you present for Dr. Menninger's sister's testimony last week?

A. I think I was for most of it.

Q. Were you present when Ms. Hart noted that Dr. Menninger hadn't previously shared her diagnosis with her?

A. Yes.

Q. Is that at all significant to you?

A. Well, I think it's significant in a couple of ways. One

is psychiatric illnesses in general and social anxiety in particular are associated with a strong sense of shame, what people sometimes call stigma. There's external stigma, how the world views oneself, and then there can also be internal stigma, you know, a sense of why can't I do this, why can't I manage this, why aren't I better in some ways, so, again, an internal self-criticism.

So the fact that she hadn't disclosed to her sister, you know, is open to a number of different ways of thinking of it. One was, again, you know, not wanting to disclose all of this. The other is that I thought her sister said something that was very important during that period of her testimony, which was she described Dr. Menninger as being shy and reclusive. So she knew that she had these attributes. I think if you go back 40, 50, 60 years, whatever the exact time frame is, you know, that we're talking about, people's awareness about mental disorders, people's ability to talk about them was much less in general. So I think there are at least a couple of different ways of understanding this.

But, you know, people -- people even with their family members hold things inside. Not all of us tell everything that's going on with ourselves.

Q. In your opinion, the fact that Dr. Menninger had kept this inside, did that increase the risk of what would happen

in the event that, when she disclosed this to PPD, they rejected her?

A. I think it's a reflection of the fact that this was an area of great sensitivity to her and that she was taking a risk in her mind.

Q. Were you also present this morning for Dr. Kessimian's testimony?

A. Yes, I was.

Q. Okay. And did you hear Dr. Kessimian testify about Dr. Menninger's concerns about traveling to the Highland Heights location after disclosure of her disability?

A. Yes, I did.

Q. And in your opinion, is that consistent with the -- with the testimony you just provided?

A. Yes, in my opinion it is.

Q. How so?

A. The -- she had -- as I understand it, this was the headquarters where she worked. This was the -- or the headquarters of the lab that she was -- and the element within PPD that she was -- had responsibility for.

And these were the people to whom she had disclosed her disability, so it's a concern that it might be more anxiety-provoking than going to some place that -- where people didn't know about this, it was neutral, and those kind of issues would not be implicated.

Q. If -- in your opinion, Doctor, if Dr. Menninger hadn't suffered that sense of rejection from PPD that you've described, would she have developed major depressive disorder and required medical leave?

A. I think it's significantly less likely. It's possible she still would have developed it, but I think it would be less likely. I think it added substantially to her stress, her self-criticism, and her sense of hopelessness -- which is by the way, again, a cardinal symptom of major depression.

Q. What is? The sense of hopelessness?

A. Hopelessness.

Q. You've indicated earlier that you've -- you've had an opportunity to interview Dr. Menninger more recently; is that right?

A. Yes.

Q. And when was that?

A. It was in late 2022.

Q. And was that to take an assessment concerning her sort of current health?

A. Yes, and just to see how she was doing currently.

Q. Okay. And just generally speaking, what, if any, findings did you make based upon that evaluation?

A. I thought that she was still very depressed, not as depressed, perhaps, in terms of suicidal ideation as June of 2018, but nevertheless still having substantial difficulties,

both with anxiety, her mood, her sense of hopelessness about the future; and that she had become really, in some measure, not maybe completely, but significantly housebound, which had occurred before, but really, it had the quality of this being kind of solidified or becoming kind of crystallized into a situation or a pattern of being and behavior that I was worried, frankly, would be hard for her to break out of.

Q. Have you reviewed Dr. Menninger's notes from her medical treatment up until the time of your most recent examination?

A. Yes.

Q. Okay. And in your opinion, has -- has Dr. Menninger sought appropriate medical treatment in an effort to try to get her life back on track, so to speak?

A. Yes, I think she has.

Q. And in the review of that medical treatment, anything there that has in any way suggested to you that, to use a term of art, Dr. Menninger is faking it?

A. No.

Q. In your opinion, as of when you recently evaluated Dr. Menninger, do you believe that she was able to return to work?

A. Not -- not at the time I evaluated her, no.

Q. Why not?

A. I think that her -- her -- both her anxiety, her secondary development of being more housebound and

agoraphobic, her persistent depressive symptoms, even though some elements of them are a little bit better when she's on the -- on her -- on the fluoxetine, all of those make that too difficult for her to imagine going back into a work situation at this point.

Q. And in your opinion, since Dr. Menninger first started her medical leave in January of 2018, has her condition gotten better, worse, or stayed the same?

A. I would say it's gotten worse to the extent that it is more habitual now. It's been going on for a relatively long time. And like anything else in life, patterns, habits, styles that develop become harder to break the longer they go on. And so it doesn't mean it's impossible, but it makes it -- you have to come back from a greater distance, if you will.

Q. In your review of the medical records, did you learn that Dr. Menninger was diagnosed with post-traumatic stress disorder?

A. Yes.

Q. Yes?

A. Yes, I did learn that.

Q. Do you agree with that diagnosis?

A. No, I don't.

Q. Why not?

A. So she has certain -- has developed, as another important

part of her symptoms, has developed some symptoms that you see within the spectrum of what's called post-traumatic stress disorder. In particular, she has -- she startles to noise or unexpected activities. I think you may have noted that her sister mentioned that she texts her before she calls. That's a kind of -- you know, not to kind of startle someone.

Secondly, she's had very disturbing dreams, and the disturbing dreams are repetitive, and they are of -- consistently around work and work-related circumstances.

And one of the attributes of dreams that you see with post-traumatic stress disorder is they represent pretty nakedly; in other words, they're not disguised dreams where you don't know quite where you are or what's going on.

This was at work where, you know, she's dealing with the director of her program. You know, she's fearful that she's going to be -- she has to go hide. She has to run. She fears that she's going to be hurt.

In some of her dreams, she mentions fears that she's going to be reported to Vladimir Putin by the director or someone else in the lab. So these are very -- so that's a second cardinal manifestation of post-traumatic stress disorder.

So she has those, but what she lacks is she doesn't have the diagnostic -- the way this diagnostic system is set

up, you have sometimes, like, A criteria and then B criteria. And you can't quite get to B unless you have A, you know? So for example, if you have mania, you can't really have a manic diagnosis if you don't have increased energy or increased activity over, like, a seven-day period. Then there are a bunch of other subsidiary symptoms.

Likewise, with PTSD, you can't get to the other symptoms to make the diagnosis unless you've got a life-threatening fearful event that you went through, generally, something where, you know, you've been shot at in combat. It's usually the direct experience of a life-threatening event that's required to give you the diagnosis of post-traumatic stress disorder.

Now, there are a lot of people who use that language more loosely. I don't -- I don't think that's the right -- doesn't mean that the symptoms are not significantly. They're quite significant, but -- and that they don't need to be treated, but it doesn't rise to the level of giving her that as a diagnostic -- a diagnosis, per se.

Q. So just to clarify that, that last bit, Doctor, is that -- in your opinion, are Dr. Menninger's PTSD-like symptoms, are those any less painful of bothersome because of the fact that she does not meet the diagnostic criteria?

A. No, they are quite both bothersome and painful.

Q. And --

A. And just to add one other element that's important is -- is an avoidance of things that either directly represent or symbolically represent where you felt traumatized. So somebody gets shot in a -- you know, in a grocery store. They may avoid grocery stores, and they may avoid stores. They may cross the street. They may not go down the street where there's a lot of, you know, shopping and those kinds of things available.

So for her, part of this -- again, it doesn't rise fully to that level, but part of the -- part of what she experiences is an avoidance of things that are reminiscent of where she feels that she was traumatized.

Q. Doctor, if Dr. Menninger tried really, really hard, shouldn't she be able to go back to work?

A. Say that again?

Q. If Dr. Menninger tried really hard, shouldn't she be able to overcome her fears and depression and go back to work?

A. Yeah, that's a misnomer about psychiatric illness. You know, the notion that if you just pull yourself up by your bootstraps, you know -- you know, at the risk of quoting Abraham Lincoln in federal court, Lincoln suffered from severe depression; and in 1841, he wrote his partner's sister, Mary Speed, that "a tendency to melancholy," which was the 19th Century word for depression, "is a misfortune,

not a fault."

So it's really important not to blame people when they're going through these illnesses. These are very real illnesses, and in some cases, they can be life threatening.

Q. And in your opinion, is the fact that Dr. Menninger has not returned to work, is that somehow indicative that she's not trying to get better?

A. No, I don't think so.

Q. In your opinion, do you believe that Dr. Menninger will get better in the future?

A. I don't know. I can't -- it's -- I can't predict. I would hope so, but I don't know the answer to that.

Q. Based upon your analysis, is there a significant risk that she will never be able to return back to work?

A. Yes, there's a significant risk.

Q. And can you explain to the jury why that is?

A. I think there are several things, some of which are kind of psychiatric and some of which are common sense. She has developed a set of symptoms which are in a number of different related categories, all of which have become somewhat habitual. I think you heard Dr. Kessimian talk about how she was worried about her husband, Dr. Menninger's husband, accommodating her too much; and, therefore, she was prescribing certain kinds of activities, such as going out walking.

Part of what we do when people have either depression or anxiety in somewhat different ways is we do a variety of things where we kind of, in a gradated way, expose them to the things that they're either anxious about or encourage what's called "behavioral activation." Because this has been going on for a long time and because this has got both anxiety, mood, and some trauma-related symptoms, it makes it more complicated. So there's a lot of -- there's a lot of things to come back from.

And then I think the other piece is -- I just think, as a practical matter, one also has to deal with the fact that being out of the work force for a number of years, explaining that, you know, to people, figuring out what kind of job you actually want to do, what your skills are, what you're best able to do, so I think all of that, you know, as she gets past some of these other things, if that's possible, that's still another question that she's going to have to deal with, which anyone who's been out of the work force for a while would have to deal with.

Q. What about Dr. Menninger's fear of rejection? Is that something else that might inhibit her future efforts to find work?

A. Certainly. There's going to be apprehension and anxiety that she has about putting herself forward. Again, back to the cardinal aspect of the -- the core of social anxiety is

fear of being rejected, fear of being seen, fear of being seen in a negative way, fear of being humiliated.

So that was already in the mix a long time ago. And she's had to, you know, over the course of her life, work through that. But that's now been accentuated by all these sets of circumstances.

MR. HANNON: That's all I have, Your Honor.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CURRAN:

Q. Good afternoon, Dr. Menninger -- Dr. Summergrad.

A. Good afternoon.

Q. Give me a second just to get set up here.

MR. CURRAN: Your Honor, may I --

THE COURT: Yes.

MR. CURRAN: -- the witness and --

THE WITNESS: Thank you, sir.

BY MR. CURRAN:

Q. All right. So, Dr. Summergrad, I think you expressed the opinion that Dr. Menninger's medical condition has gotten worse since she disclosed her disability to PPD?

A. Yes.

Q. Okay. And that was in January of 2018?

A. Yes.

Q. And it's also your opinion that Dr. Menninger developed

major depressive disorder? I think you testified to that before?

A. Yes.

Q. And when did -- she developed that in the spring of 2018, I think you said?

A. I think that that's correct.

Q. Okay. So you didn't examine Dr. Menninger in January 2018, correct?

A. No, I did not.

Q. In fact, you didn't meet her until August 7, 2020; is that right?

A. I'd have to look back to the dates on my interview, but approximately then.

Q. Okay. Is it your recollection that your first meeting with her was in 2020?

A. That's correct.

Q. Do you recall it being in August of 2020?

A. I don't recall whether it was August or not.

Q. Okay. Well, you can take a look at the binder in front of you.

A. Uh-huh.

Q. The first tab, I believe, is your report in this case. I think on page 1, it says when you met with Dr. Menninger.

A. Yeah, it says August 7, 2020.

Q. Okay. So that was more than 2½ years after January 2018,

correct?
A. That's correct.
Q. And when you met with Dr. Menninger in August 2020, you interviewed her for about two hours and 15 minutes; is that right?
A. That's correct.
Q. Now, your interview with Dr. Menninger in August 2020, that wasn't in person, correct?
A. It was not, no.
Q. It was conducted partly by Zoom and partly by telephone, right?
A. Yes. I think at one point, the Zoom link went out and we switched to telephone, but the majority of it was by Zoom.
Q. Okay. So in forming your opinion about Dr. Menninger's health, mental health conditions and their progress in the first few months of 2018, you relied on your interview with her in 2020, as well as the medical records that you reviewed and other documents?
A. That would be correct.
Q. All right. And your opinion is based in part on what she said to you in the August 2020 interview, correct?
A. It would be, in part, correct.
Q. In diagnosing patients in your own practice, you have to rely on what they tell you, correct?
A. I'm sorry?

Q. In diagnosing patients in your own practice, you have to rely on what they tell you, correct?
A. In part.
Q. Now, when you interviewed Dr. Menninger in August 2020, she already filed this lawsuit, correct?
A. I believe so.
Q. Okay. And her lawyers had hired you to provide an expert opinion in the lawsuit. That's why you were talking with her, correct?
A. I'm sorry. I missed the last part of what you said.
Q. Yeah. Her lawyers had hired you to --

THE COURT: You might want to lift the microphone, see if it straightens up -- you're pretty tall.

MR. CURRAN: Yeah, sorry. I could --

THE COURT: Just be louder.

MR. CURRAN: Or I can just talk louder.

THE COURT: There you go.

MR. CURRAN: Yeah. It's a little bit uncomfortable.

THE COURT: Stand up straight and just talk louder.

BY MR. CURRAN:

Q. So her lawyers had hired you to interview her, right, in connection with this lawsuit?
A. They had hired me to provide an expert opinion to them.
Q. Okay. And you were interviewing -- interviewing her

specifically in connection with your effort to -- to develop an expert opinion in this case, right?

A. That's correct.

Q. And she knew you were interviewing her for that purpose?

A. Yes. I made that clear.

Q. Right. And in evaluating what she was telling you during your meeting with her in August of 2020, did you consider the fact that the meeting was occurring in the context of her lawsuit against PPD?

A. Can you explain? I'm not quite sure what that means.

Q. So what I'm trying -- I'll try to ask a better question. Did you consider the context in which you were interviewing her and when you were evaluating what she told you in that, you know, she was talking to you in connection with your interview with her, in connection with this lawsuit?

A. Yes, among other things.

Q. Okay. And how did that inform your opinion?

A. She was, you know, a litigant in a lawsuit, but I was nevertheless interviewing her to try to understand the nature of the course and the current state of her mental disorders, if any.

Q. Okay. Now, in forming your opinions about Dr. Menninger's mental state and the progress of her conditions in 2018, you also relied on medical records that you received concerning Dr. Menninger, correct?

A. That's correct.
Q. So you were also relying on what she told those therapists, right?
A. Those physicians and other people, yes.
Q. Right. Did you speak with any of her physicians and other people?
A. No, I did not.
Q. All right. Now, in forming your opinion in this case, did you speak with Dr. Menninger's husband?
A. No, I did not.
Q. And did you speak with any of her other relatives?
A. No, I did not.
Q. What was the name of Dr. Menninger's therapist in 2018? It was Marianna Kessimian, right? You were here for her --
A. Her doctor -- her psychiatrist was Dr. Kessimian.
Q. Right. Sorry, I don't mean to denigrate her by saying "therapist," it was just the word I was using. I understand that she's a medical doctor.

And Dr. Kessimian was at the time a medical doctor, correct?
A. Correct.
Q. And you reviewed Dr. Kessimian's therapy notes from 2018?
A. Her therapy, her medical evaluation notes, her clinical notes. They were not just therapy notes.
Q. Okay. I'm going to show you a document that we've marked

as Joint Exhibit 18 in this case, which I think you've seen before.

A. Uh-huh.

Q. So this first page is Dr. Kessimian's notes from January 22, 2018, correct?

A. That's what it says, yes.

Q. All right. And you reviewed these in connection with forming your opinion?

A. Yes, I did.

Q. Now, this is -- about -- in the first paragraph, about two-thirds of the way down, there's a sentence that begins "her overall daily level of anxiety." Do you see that?

A. Yes, I do.

Q. All right. And it reads, "Her overall daily level of anxiety and somatic symptoms of anxiety has increased." And that's in January of -- of 2018, correct?

A. Yes.

Q. And the next paragraph, the second sentence reads, "Today for her appointment is the first time in weeks she has left her home."

Do you see that?

A. Yes, I do.

Q. And she goes on to say, "She is married to an engineer, who struggles with his own specific phobias, and he has taken over all the family and childcare responsibilities."

Do you see that?

A. Yes, I do.

Q. And then, skipping down to the next sentence, its reads, "After her appointment, she had planned to pick up her nine-year-old daughter, Maya, from school; and her daughter was excited and remarked that many of her peers do not believe that she has a mommy because they have never seen her."

Do you see that?

A. Yes, I do see that.

Q. All right. And this is all Dr. Kessimian's notes from January of 2018, correct?

A. Yes.

Q. And this was before PPD has, you know, denied her accommodations, correct?

A. I believe so, correct, but after she disclosed her disability.

Q. Okay. So she had disclosed her disability at this point?

A. Yes.

Q. That was something she chose to do, correct?

A. I believe -- I believe so, yes.

Q. It wasn't something that PPD did to her?

A. No.

Q. Turning to the next page, do you see, under family history there, about halfway down the page?

A. Yes.

Q. And it reads, "Mother and maternal grandmother with severe anxiety disorders, mother cannot order for herself at a restaurant," and it also says about her father, "Involuntarily hospitalized for erratic and violent behavior, denies substance abuse history, unemployed throughout Lisa's life, schizophrenia on her father's side of the family."

Do you see that?

A. Yes, I do.

Q. Did you consider whether this family history played any role in causing Dr. Menninger's mental health disorders?

A. Well, certainly the mother and the grandmother, if it is accurate that they had severe anxiety disorders, would put her at increased risk, just genetically, for developing a severe anxiety disorder.

Most of what we consider major psychiatric illnesses have a greater likelihood to be occurring genetically. There's some what we would call a genetic loading or a genetic propensity, and they vary. It varies by the type of disorder.

Q. And a little further down, there's a sentence that reads, under "developmental history," "mother did leave her father and move them back to her hometown."

Do you see that?

A. Yes.

Q. "Then they reconciled and he came back to only continue with rages and violence and unpredictability."

Do you see that?

A. Yes.

Q. Did you consider that as well?

A. Yes, I did.

Q. And do you know whether Dr. Menninger ever witnessed the erratic and violent behavior by her father that's referred to her?

A. My understanding is she did see her father be violent toward her mother.

Q. In what way?

A. I don't recall exactly the way that that would -- that occurred, but I believe she was -- she did witness --

Q. Okay.

A. -- his behavior.

Q. Okay. Now, turning to the next page, at the top there, in the second sentence, it reads, "She would rather avoid any situation that calls for small talk, being social, meeting new people, or even going to places where there could potentially be a crowd and she would have to interact with others."

Do you see that?

A. Yes, I do.

Q. And under "panic, social phobia," the next paragraph, she

talks about Lisa remembering as young as three or four dreading school, especially fear of being called on to answer a question.

"If she was called on, her body and voice would shake, and this experience was both physically and mentally painful and exhausting. This has continued into adulthood and even at small meetings when she needs to present three or four slides."

Do you see that?

A. Yes, I do.

Q. You do? Okay.

A. Yes. I do.

Q. So these, again, these are all symptoms of Dr. Menninger that predate any action by PPD, correct?

A. Yes.

Q. Skipping down a little bit to a paragraph that was discussed during Dr. Kessimian's testimony, do you see the paragraph beginning "eating disorder behavior"?

A. Yes.

Q. It says, "Eating disorder behavior, weighs herself daily."

Do you see that?

A. Yes.

Q. So according to these notes, in January of 2018, Dr. Menninger is already exhibiting an eating disorder?

A. Yeah, I'm more skeptical of that terminology and that conclusion.

Q. Why is that?

A. There are specific criteria for whether someone has an eating disorder as opposed to certain kinds of eating proclivities. Being vegan is not an eating disorder, exercising is not on eating disorder. In order to have an eating disorder, you need to have a set of other symptoms and criteria and, again, while it's possible that she would meet those criteria, that isn't established through these notes and the part of the reason why I didn't give her that diagnosis.

Q. Okay. And Dr. Kessimian was the one who was actually meeting with her at this time, correct?

A. Yeah.

Q. And you, again, didn't meet her until 2018, correct?

A. That's correct.

Q. Did you ask her about her eating behavior in 2018 when you spoke with her in 2020?

A. I did not.

Q. Oh, and then in the next paragraph, under "trauma," it says "witnessed domestic violence as a child (father holding a knife to her mother's throat)."

A. Yeah, and I do recall reading that, now seeing that.

Q. All right. Did you consider whether this could be a

cause of her mental health disorders?
A. It certainly -- it's certainly unlikely to have helped her mental health.
Q. Okay.
A. And it also may be a risk factor for -- for example, her developing major depression.
Q. Okay. So it's something, again, that preexists her employment with PPD that could have contributed to her developing depression and --
A. Well, it's certainly a vulnerability that she had.
Q. Okay. Could -- as a vulnerability, though, what's the difference between a vulnerability and a contributing factor in causing a condition?
A. I'm not quite sure what -- I mean, it would depend on what you mean by a contributing factor.
Q. Something that contributes to --
A. So the way I was using the term "vulnerability" here is, just to be explicit, we don't know the nature of her father's diagnosis. There are various terms that are thrown around here. We know that he was violent and he was erratic and didn't work. We know that there's, by report, a family history of schizophrenia, but, you know, lots of diagnoses that get carried around in medical records, and particularly from 50, 60 years ago, are inaccurate. And that's been well demonstrated in a number of studies.

So he may have had schizophrenia. He may have had other problems. He had may have had manic-depressive illness or some other disorder that could have put her at greater risk. I simply, as a medical professional, don't know the role that that plays, and that's what I was talking about vulnerability.

Clearly, also, witnessing trauma is a vulnerability for anybody.

Q. Yes, so putting aside whatever condition her father was diagnosed with or may have had, you know, just witnessing what she witnessed, as recorded here, increased the likelihood that she would be -- later develop major depressive disorder and other disorders?

A. It could. I'm not saying it did.

Q. Okay. All right. So I just flipped to the next page while you were talking. Sorry.

A. It's okay.

Q. Under "social," near the bottom of the page, do you see it, there's a paragraph that begins "Social:"?

A. Yeah.

Q. "Social: Pathologist working in the private sector. Sole financial contributor to the household. Husband empathetic and understanding partner. Concern for excessive accommodation to the point where all her needs are met and she is not asked/required to leave the house."

Do you see that?

A. Yes, I do.

Q. All right. So this, again, was something about Dr. Menninger that existed in January 2018 before PPD did anything to deny her accommodations, right?

A. Well, this -- this note occurs in January of 2018, I believe.

Q. Correct.

A. Right. So to the extent that her disclosure of her disability -- again, as you point out, her decision to do that, but, you know, it could have contributed to some of this. But, again, it sounds like it's preexisting.

Q. Okay. And it certainly preexists, you know, the -- her submitting her request for accommodations, and it preexists her -- the rejection of her request for accommodation, right?

A. Yes, and it preexists her, you know, good performance evaluations that she had at PPD, as was demonstrated earlier.

Q. Right. Okay.

Now, just beneath that, there's a word -- or a set of sentences, beginning diagnosis. Do you see that?

A. Yep. Yep.

Q. And do you understand this to be Dr. Kessimian's diagnosis of Dr. Menninger at this time?

A. Yes.

Q. All right. So at this point, there's no diagnosis of

major depressive disorder, right?

A. That's correct.

Q. And that -- you agree with that? There's -- she didn't have a major depressive disorder at this point?

A. She didn't appear to be at that point, no.

Q. Okay. Did you say she didn't appear to be?

A. Didn't appear to be suffering from major depressive disorder at that point. Correct.

Q. And now at the bottom of that page, there's the word "plan," and then the plan appears on the next page. Do you see that?

A. Uh-huh, yes.

Q. Now, the first item on the plan is "start fluoxetine." Sorry if I mispronounce that?

A. No, you got it right.

Q. Oh, good. "5 milligrams for one week and increase to 10 milligrams daily if no side effects."

A. Uh-huh.

Q. What is the brand name of fluoxetine?

A. It was historically known as Prozac. It's now no longer -- I mean, there is still branded Prozac, but it's been generic for quite some time.

Q. Okay. And is Prozac or fluoxetine, is that prescribed for social anxiety disorder?

A. It's prescribed for a wide range of both anxiety

disorders and major depression.

Q. All right. But it's appropriately prescribed for anxiety disorders?

A. Yes, it is.

Q. Okay. All right. Turning to the next treatment note, this is for February 2, 2018. Do you see that?

A. Yes.

Q. And you reviewed this in connection with forming your opinion in this case?

A. And, by the way, can I just add one other thing about the fluoxetine?

Q. Sure.

A. So the fact that Dr. Kessimian -- whose notes, I think, were spectacular -- started her at 5 milligrams a day is a little unusual. And it's likely that she -- again, most people who start on this -- people take 20 million grams a day. People often start at 10 milligrams a day, unless they're much older, geriatric persons or persons that are on other medications that will cross-react.

Theirs is one exception where people tend to start very low, and that's when people have anxiety disorders. So it leads me to think -- I don't know this for a fact, but my inference is, my medical opinion would be, it would be likely that she started that at a low dose that way along with the Valium because she was concerned she was treating an anxiety

disorder, and there's a tendency for anxiety disorders to require starting with very low doses.

Q. Okay. So the fact that it was a low dose contributes to your belief that this was for -- prescribed for anxiety disorders?

A. Yes.

Q. Okay. All right. So turning back to the February 2nd note, the chief complaint there, Dr. Kessimian recorded, "I am just worried all the time. I wake up with my heart already beating fast thinking about how I have to see the people that I work with at the end of the month after handing in those letters to HR."

Do you see that?

A. Yes, I do.

Q. And then it says, "history of present illness, since last visit continues to isolate at home and hardly leave her family," right?

A. Right.

Q. So, again, these are things that are a part of her mental health conditions in early February of 2018?

A. Yes.

Q. At this point, all that's happened is she's disclosed her disability to people at work, but they have not rejected her requests for accommodations yet?

A. Well, for somebody with social anxiety, all that -- all

that she's done is disclosing her anxiety; that's a very big deal.

Q. Right. Yeah, I'm sorry. I didn't mean to minimize it. My point was just that PPD hasn't done anything to her at this point, correct?

A. Not that I'm aware of.

Q. Okay. And based on your review of the documents that you were provided, there was nothing that you saw in those documents indicating that they had --

A. Well, I'd have to go back and look at them specifically, but you know, again, I don't recall something from that period of time.

Q. Okay. All right. Two paragraphs down from that, there's a paragraph that begins "spoke at length." Do you see that?

A. Yes.

Q. "Spoke at length about her experience in the work environment where she feels that, because she's more introverted and analytical, she's being criticized for things that are unchangeable. Has difficulty advocating for herself and is already resigned to defeat in the corporate culture."

Do you see that?

A. Yes, I do.

Q. So here she's talking about feeling that she's being criticized for things that are unchangeable. Do you see that?

A. Yes.
Q. And she seems to be attributing that, not to discrimination or retaliation or to rejection of her request for accomodation, but to the fact that she's introverted and analytical, right?
A. Well, that's the way Dr. Kessimian phrased it in her note. I don't know directly what -- what exactly was prompting those feelings.
Q. Okay. Well, they couldn't have been prompted by denial of her accommodations, right?
A. Or they could have been prompted by something else that she either felt or was worried was changing in her interactions with her colleagues or superiors.
Q. My question was a little different. It was they couldn't have been -- these feelings couldn't have been prompted by her -- denial of her accommodations, correct?
A. No. They were -- to the best of my knowledge, they were not denied at that point.
Q. And have you seen any documents or other evidence to indicate that she was being subjected to any sort of maltreatment by her superiors or co-workers at this point?
A. Again, not that I recall.
Q. Okay. All right. So flipping to the next page, at the bottom, do you see under "diagnosis" there?
A. Yes.

Q. And so Dr. Kessimian didn't diagnose her with major depressive disorder on February 2nd, correct?
A. Correct.
Q. Okay. All right. So this is the next note from Dr. Kessimian on February 16, 2018. Do you see that?
A. Yes.
Q. And under the history of her present illness, it says, "Since last visit continues to isolate at home and hardly leave her family."
Do you see that?
A. Yes, I do.
Q. So that's the same as the last two visits, right?
A. No, I don't think so, actually.
Q. Okay. How is it different from what --
A. So I think if you looked both at the chief complaint and at the end of that paragraph, there are two pieces of information that are quite important. And --
Q. My question is a little different and --
A. Okay.
Q. -- Mr. Hannon will have a chance to ask you questions about that kind of stuff. And you can certainly talk in response to that. But I -- you know, in order just to preserve my time --
A. Understood.
Q. -- I would like you to focus on my question, which is,

under the "history of present illness," it says, "Since last visit continues to isolate at home and hardly leave her family." That's the same as what she said at the last two visits, correct?

A. Yes. That's not changed.

Q. Okay. And on the next page, under "diagnosis," the first two are panic disorder with agoraphobia. What is agoraphobia, by the way?

A. So agoraphobia is, the agora is -- I think it's a Greek work that means "marketplace," and it literally means fear of the marketplace, but it generally means fear of going out. And it's either a fear of -- generally a fear of leaving the house.

Q. Okay. And then "social anxiety disorder," and it goes on to the next page, at the top, "generalized anxiety disorder." Do you see that?

A. Yep.

Q. So still no major depressive disorder, right?

A. Yep.

Q. Now, this is the note from March 9th. Again, under "history of present illness: She still continues to isolate at home and hardly leave her family."

That's the same, right?

A. Correct.

Q. Oh. Okay. Sorry, I didn't hear what you said?

A. Sorry. I didn't -- I wasn't quite sure if there was a question there.

Q. Oh, yeah. There was.

And then the next sentence reads, "Did attend a business meeting in Cincinnati where she met with both Chad, HR representative, and her boss Hacene to discuss accommodations. She was disappointed when they mentioned an exit package/consulting position as she likes her job and knows that she can do her job. She was able to assert herself and is now in a waiting period."

So Dr. Kessimian doesn't say she was devastated or felt rejected by what happened at that meeting, right? She says she was disappointed, at least according to these notes by --

A. Well, according to these notes, and I think that's the critical --

Q. Yeah, and Dr. Kessimian was there with her and speaking with her, right?

A. Yes.

Q. Do you have any reason to think that she wasn't accurately recording her impressions of what Dr. --

A. I think, you know, these are not -- most medical notes are not veridical records. They are not transcripts in the same way that might exist here.

Q. Understood, but when -- you make medical notes like this?

A. I hope I make good medical notes like this. Yes.
Q. You make an effort to make them accurately reflect --
A. I do.
Q. -- what you were told?
A. I do.
Q. So you wouldn't use a word like "disappointed," if what your actual impression was devastated or broken or --
A. Fair enough.
Q. Okay. And it goes on to say, "She was able to assert herself and is now in a waiting period."

So it looks like, at least according to these notes, again, Dr. Menninger took some positives from the meeting in that she was able to assert herself, correct?
A. That's what it sounds like.
Q. Okay. A little bit down, down about two-thirds of the way down the page, there's a paragraph that begins, "Also worries." Do you see that?
A. Uh-huh.
Q. She, "Also worries about her social anxiety disorder might be impacting her daughter, Maya. About two years" -- "about two years stopped saying 'I love you' to her parents. Not sure what this is about, but it is bothersome to her."

Do you see that?
A. Uh-huh.
Q. Did you consider whether this issue with Maya could have

caused or contributed to Dr. Menninger's mental health conditions?

A. I think her situation with her family was very important to her. I don't see that as being discontinuous from what she had been experiencing previously over the last period of time with her daughter or with her husband.

Q. Okay. And my question was a little different, though. It is: Did you consider it as part of what could have caused her mental health conditions?

A. You know, it wasn't the primary focus of what we discussed. I certainly was aware that they had moved because of concerns about her daughter. I recalled that after reviewing some additional records.

Q. Okay. So you discussed her daughter, her relationship with her daughter, when you met with her and --

A. We really didn't -- we focused primarily on her historical symptoms and what was going on at work and what happened at work and what she did at work and the -- the history of her major psychiatric conditions.

Q. You had reviewed these notes before you met with Dr. Menninger?

A. I don't -- I can't say that with absolute certainty. I think so. I would believe I did.

Q. In any cases, you didn't ask her about this note?

A. I don't recall asking her about that. I didn't recall

asking her about her -- her daughter in this particular note, no.

Q. Do you recall asking her about her daughter at all?

A. Just only to the extent that I know that she had a daughter, and I listed -- I went through family history, and I know that she had moved because of concerns about school.

Q. So you didn't consider whether the issues with her -- any issues with her daughter might have contributed to her mental health conditions?

A. I was trying to understand primarily where she fit diagnostically.

Q. So is the answer no?

A. I didn't ask her about her daughter in that sense, no.

Q. Okay. All right. So this is page 3 from those notes on March 9, 2018. So as of this date, Dr. Kessimian still has not diagnosed Dr. Menninger with major depressive disorder, right?

A. Yes.

Q. Flipping to the next note from March 16, under "History of Present Illness," "Since her last visit, continues to isolate at home and hardly leaves her family."

So that's unchanged. She's still doing that since January, right?

A. Uh-huh.

Q. "Has not been able to walk around her neighborhood, and

this was the goal for the last week, secondary to her social anxiety symptoms and fears that, at this point, it has been such a long time that her neighbors have seen her that they will seek her out and ask questions."

Have I read that correctly?

A. Yes.

Q. Did you ask for how long it had been since her neighbors had seen her?

A. I did not.

Q. Okay. And do you know?

A. I don't.

Q. And we saw that in the notes for January 22nd that, as of that date, Dr. Menninger hadn't left her home in weeks, right?

A. Yes, I did see that.

Q. So is fair to assume that this isolation from her neighbors predates her first visit with Dr. Kessimian?

A. I think it's not unreasonable to assume that.

Q. And, again, that was before her accommodations were denied, correct?

A. That's correct.

Q. And flipping to page 3 again, under "diagnosis," there's still no diagnosis of major depressive disorder, right?

A. Correct.

Q. This is the note from March 23, 2018.

A. Yep.

Q. "History of present illness: Since last visit continues to isolate at home and hardly leave her family." That's again no change, right? Same change as January 2018?

A. Yes.

Q. Skipping down a bit, "Continues to have intrusive thoughts about what her neighbors might be thinking of her, preventing her from going outdoors, including that it's been such a long time since she has been outside that they are thinking about what is wrong with her."

So she continues to be unable to encounter her neighbors, right?

A. Yes.

Q. And she confirms that's been going on for a long time, correct?

A. Yes.

Q. And under diagnosis, again, she -- this time, she adds a diagnosis of sleep disturbance. Do you see that?

A. Yes, I do.

Q. Okay. But there's still no diagnosis of major depressive disorder?

A. No, although sleep disturbance can be an important symptom of major depression. There are other things that can give you sleep disorder, as well.

Q. What other things can give you sleep disorder? Can --

A. Being on -- being on a medication like fluoxetine can give you a sleep disorder.

Q. Can anxiety give you sleep disorder?

A. Generally not the same way, no.

Q. All right. Skipping to the next note, March 30th. She's continuing to isolate at home and hardly leave her family, correct?

A. Yes.

Q. And then after the blackouts there, it says, "Though, is sad/frustrated that since coming out with her social anxiety disorder, she's felt worse than she has ever -- than she has ever had before, and now has doubts about her decision."

So it looks like she's attributing her feelings to -- it doesn't look like she's attributing these feelings to any -- what anything -- anything that -- any one at work -- let me ask a different question, strike that. It doesn't look like she's attributing these feelings to anything that anyone at work has done in response to her disclosing her disorder, right?

A. Well, based upon my review of the records and based on my discussions with her, I think she felt that she was not getting clear answers to a variety of issues that were of concern to her, including the nature of her job description or the accommodations that might or might not be forthcoming. And I think that that caused her both to begin to feel worse,

but also begin to be self-critical about her decision to reveal her illness.

Q. Okay. That's not what's reflected in these notes from Dr. Kessimian, though, right? Who saw her in --

A. These notes don't discuss that.

Q. Right. They don't say anything about, you know, frustration with not getting answers to --

A. Yeah, it says work stressors remain and she's been recently navigating some difficult client interactions, but doesn't go into greater detail than that.

Q. Did you consider the fact that -- or the possibility that her worsening mental condition was due to the fact that she felt self-conscious about having to disclose to others what she -- that she had a mental health condition?

A. I think that that is part of what -- what happened for her.

Q. Okay. So that's part of what caused her worsening health condition?

A. Well, I think it was -- it was disclosing and then the experience that she had of not being particularly -- she didn't feel that people were being forthcoming with her about the things that she had raised, and I think it -- it intensified her feeling of doubt and self- -- self-recrimination.

Q. Okay. Under "Diagnosis" -- I flipped to two pages ahead.

Again, there's no diagnosis of major depressive disorder here on March 30th?

A. Correct.

Q. This is the note for April 6th, "History of Present Illness. Since last visit, continues to isolate at home and hardly leave her family."

Again, that's unchanged, correct?

A. Yes. But above that, it says, "I don't know how much more I can handle without needing to go to the hospital," under her chief complaint.

Q. Right.

And under -- a couple paragraphs down, under "Work Stress," it says, "Work stressors remain, and she is recently navigating some difficult client interactions."

You just pointed that out in the last note, right?

A. Yeah. And that seems to be continuing.

Q. So it looks like she's talking about some difficult client interactions, at least in part, right?

A. It looks like that.

Q. Yeah. Did you ask her about those client interactions when you spoke with her?

A. We mainly diagnosed, again, from a diagnostic standpoint and how her interactions with work were going.

Q. Did you consider whether these difficult client interactions may have caused her worsening mental health

condition?
A. It -- I think that they all fall within the broad work domain.
Q. "The broad work domain." So they're part of the broad work domain that you think caused her worsening health conditions?
A. No. I think that they're part of what she experienced in a job which had a lot of responsibility and had challenges associated with it. I don't think it was the primary thing that was driving her mood or -- or sense of well-being.
Q. Why is that?
A. Because she was -- she was worried about what the nature of her job was going to be. She was worried about how she would be able to manage, given her disability and uncertain set of changes that were not fully defined for her. And she was --
Q. She was also worried about her difficult client interactions, right? Because that's what she told Dr. Kessimian.
A. You know, I can't speak to that beyond what's here in the note.
Q. Well, we know that she told Dr. Kessimian that, right?
A. Yeah. Understood.
Q. And you didn't ask her about that, correct, when you spoke with her?

A. No. We focused on other things.
Q. So this is the last page of that note for April 6th, and do you see the diagnosis there?
A. Yeah.
Q. And, again, there's no diagnosis of major depressive disorder in April?
A. That's correct.
Q. This is the note for April 13th, first of two. We'll get to the second one in a minute. Under "History of Present Illness," the same, isolating at home, and she's saying she uses this appointment to motivate her to leave the house. This is basically unchanged since January of 2020 -- or 2018, right?
A. I'm sorry, say that again.
Q. This is basically the same, unchanged since January of 2018?
A. It's slightly different language there, but it's not substantively changed.
Q. Okay. And the diagnosis on the last page of the notes, again, no diagnosis of major depressive disorder, right?
A. Correct.
Q. All right. So this is the second note. You were here when Dr. Kessimian was testifying this morning, correct?
A. Yes.
Q. And she testified that this was not April 13th, it was

some other date in April, right?

A. Yes, I heard that.

Q. All right. Under "Chief Complaint," Dr. Kessimian records, "I have found a sense of empowerment in advocating for myself and my strengths, and I am proud that my daughter is a witness to this."

Do you see that?

A. Yes, I do.

Q. So according to what she told Dr. Kessimian at this point, this is April 6th -- or April -- some time in April 2018, she's feeling a sense of empowerment and pride, right?

A. I'm sorry? Say that again.

Q. So as of sometime in April, whenever these notes were --

A. Right.

Q. -- she's feeling a sense of empowerment and pride, correct?

A. Yeah. I think it's wonderful.

Q. And you would agree that those are positive feelings?

A. Yes.

Q. And these aren't feelings she reported having back in January 2018, correct?

A. Not to Dr. Kessimian, no.

Q. Okay. Did she tell you she had them --

A. No, she didn't.

Q. Okay. But she's continuing to isolate at home. No change in that since January of 2018, correct?

A. Yes.

Q. A couple of paragraphs down, "work stressors remain and she's recently navigating some difficult client interactions and boss interactions and has been complimented, but has also had to take Valium."

Do you see that?

A. Yes, I do.

Q. When you met with Dr. Menninger did you ask her about her having been complimented at this point?

A. I don't think we discussed that, per se.

Q. Okay. A few paragraphs down, under "moot," it says, "Mostly externally dictated. Family life feels satisfied and also slight glimmer and feeling more empowered at work."

Do you see that?

A. Uh-huh, yes, I do.

Q. And the next paragraph, "She reports two to three overt panic attacks triggered by work, but none that were out of the blue, which is an overall subtle improvement from her initial evaluation."

Do you see that?

A. Yes, I do.

Q. So there's been some improvement, a subtle improvement, but improvement with respect to her panic attacks since

January of 2018?
A. Yeah, and there's a mention in earlier notes from Dr. Kessimian about subtle improvement that she attributes potentially to the fluoxetine.
Q. Okay. Do you recall where that was?
A. Oh, it's several notes back. It's several times, over several notes.
Q. Okay. But here anywhere she didn't attribute it to the fluoxetine?
A. No, not here.
Q. And here's the diagnosis again. No diagnosis of major depressive disorder?
A. None.
Q. All right. So we're now about halfway through April 2018 and Dr. Kessimian has not diagnosed Dr. Menninger with major depressive disorder, correct?
A. She has not.
Q. And Dr. Kessimian continued treating Dr. Menninger through most of the rest of 2018; is that right?
A. Yes, that's my understanding.
Q. And you reviewed Dr. Kessimian's treatment notes for that period?
A. Yes, I did.
Q. Do you know how many times approximately she treated Dr. Menninger in --

A. I would have to go back and add them up.

Q. Okay. More than 20?

A. No, I don't know exactly. It's -- I don't want -- I don't want to guess at a number.

Q. Okay. Well, you were here this morning when, I think, Dr. Kessimian testified that she was seeing Dr. Menninger more or less weekly?

A. At some point, it became weekly. I don't think it was weekly in the very beginning.

Q. Okay. Now, we're not going to go through all these notes, I'm sure you'll be disappointed to hear, but would you agree with me based on your review of all the notes that Dr. Kessimian did not include major depressive disorder as a diagnosis of Dr. Menninger in any of the other notes that she took?

A. I would have to look forward. Clearly, there was concern about worsening suicidality, you know, in the -- in the early June period. I don't recall. I'd have to look to see in that note whether or not she diagnosed her with any other condition at that point.

Q. Okay. Well, I don't want to go through all the notes, but is it fair to say that you -- you don't recall seeing a diagnosis of major depressive disorder?

A. I would have to look back at the notes specifically.

Q. Okay. Well, then here's the note for April 27, 2018.

Under "Chief Complaint," she says, "I'm only sleeping for three hours per night, and now I'm waking up with panic attacks from sleep. Things just keep getting worse, and sometimes, if it wasn't for Maya and Mason, I would just want this all to end. I don't want you to worry about me. I know I won't end my life, but this suffering at times is unbearable."

Do you see that?

A. Yeah, I do.

Q. She doesn't say what's causing these feelings, correct?

A. You mean in her chief complaint?

Q. Yes.

A. No. She just describes what she's experiencing.

Q. Okay. Do you see anywhere else in this note where she says --

A. I would have to read through the whole note.

Q. Can you take a quick scan through it and see if you see anything?

A. See where it says, "Glimmer of therapeutic efficacy," in the third paragraph from the bottom, where she's talking about fluoxetine. That's a period in her earlier notes. That's what I was referring to before.

Mood, six out of ten -- so, you know, again, that -- I believe that's not terribly dissimilar to what she described before. The sleep disturbance certainly sounds

worse.

Q. Okay. I just flipped to page 2.

A. Uh-huh.

Q. Do you see anything on there that indicates that the conditions she described in the first paragraph were caused by anything in particular?

A. Some passive suicidal ideation under "safety."

Q. Right. Well, my question was, do you see anything there that indicates what caused these conditions?

A. Nothing that caused them --

Q. Okay.

A. -- by cause -- or attribution of causation.

Q. Okay. You mentioned passive suicidal ideation. What is passive suicidal ideation?

A. So suicidal ideation is a broad schema for psychiatrists. It covers lots of different things.

Sometimes, people will describe the feeling that they just don't want to be around anymore, but they wouldn't do anything to actually end their lives; that, you know, if God came and claimed them at night and they didn't wake up, that would be all right with them. That's what we call passive suicide. So it's a wish to die or a wish to be dead, but not a wish to act on something.

Q. Okay. So that's passive suicidal ideation?

A. That's correct.

Q. Is there a nonpassive suicidal ideation?
A. Yes.
Q. What's that?
A. Active suicidal ideation. There is active suicidal ideation in the setting of a formal intent or plan. There's command hallucinations to kill oneself. There's all sorts of different things.
Q. So she denies an intent or plan, according to --
A. That would be my inference from Dr. Kessimian's note.
Q. And she says it, right?
A. I'm sorry?
Q. She says it in the second line, under "safety," "denies intent" --
A. Yeah, denies intent or plan. That's correct.
Q. Okay. So this is the next page. Diagnosis, again, no major depressive disorder?
A. Yep.
Q. Here's the note from May 18, 2018. You look down at the bottom, under "safety, suicidal ideation has resolved."
Do you see that?
A. Yeah, I saw that.
Q. So whatever suicidal ideation she had reported in the last note, that's been resolved now?
A. Yes.
Q. And this is the next month?

A. Uh-huh.
Q. All right. And here, under "Diagnosis," again, no major depressive disorder yet?
A. No.
Q. Okay. All right. So this is the note from May 25, 2018. "Chief Complaint. The internal investigation found no evidence of discrimination."
Do you see that?
A. Yes, I do.
Q. Do you know what that refers to?
A. Yes, I do.
Q. What is that?
A. That she -- there was an internal investigation that I believe I was here for some of the testimony of your HR director that reviewed this and didn't find evidence of discrimination.
Q. Okay. And under "History of Present Illness," it says, "Since last visit, continues to isolate at home and again uses this appointment to motivate her to leave the house."
And that's similar to what we've seen --
A. Yes.
Q. -- in January, right?
A. Yep.
Q. A couple of sentences down in that paragraph, "She has also decided to finally take some leave in the beginning of

June to see her friends at the ultra walk."

Do you see that?

A. Which paragraph is that?

Q. So it's the History of Present Illness paragraph. It's just the last sentence in that paragraph, right after the blacked out --

A. Yes, I see that.

Q. So are you aware that she went out on medical leave in early June 2018?

A. Yes, I am.

Q. So it looks like she was already planning to take some leave, according to this note, correct?

A. That's what it look like.

Q. Okay. Do you know whether she, in fact, did the ultra walk in early June?

A. I don't know.

Q. Did you ask her?

A. I don't recall. I know she went into a partial hospitalization program in early June.

Q. She went into a partial hospitalization program in early June?

A. Yeah. At Butler Hospital.

Q. So that was early June?

A. I believe so, correct.

Q. And so she couldn't have probably done the ultra walk if

she was in the hospital, right?
A. Don't know.
Q. All right. A couple paragraphs down, it says, "Work stressors remain but with a resolution in sight."
Do you see that?
A. Yes.
Q. So this was after the internal investigation came back and found no --
A. Yes.
Q. Okay. A little down, "Mood, six out of ten, mostly externally dictated. Family life feels satisfied, but work life remains stressful and a sense that she cannot trust anyone and they are scanning her for fault at all times and there's little appreciation of effort to understand what her role is in the company, though being able to assert herself has in some ways been helpful."
Do you see that?
A. Yes, I do.
Q. Okay. So, again, you know, she's asserting herself and that's -- she's finding that helpful?
A. Yes, and also notes that there's little appreciation of or effort to understand what her role is in the company, which has been stressful for her.
Q. Right. But she is continuing to work at it and assert herself, it looks like --

A. Uh-huh.

Q. -- right?

All right. Under -- in the last paragraph on that page, after the blackout, there's a sentence that reads, "At this time, discussed honestly that she has not utilized higher levels of care of gold standard treatment, including exposure, which is usually considered before disability is granted."

Do you see that?

A. Yes, I do.

Q. What is "exposure"?

A. So I think, if you remember Dr. Kessimian's testimony, she was talking about how it -- if you have -- you have something that causes you anxiety -- let's say it's -- it's being outdoors or it's being in the presence of snakes or something like that, or it might be, you know, other -- whatever the thing is.

What people do is they gently try to increase the amount of time that people can spend in the presence of what's called the phobic stimulus and teach people CBT, relaxation, and other -- it's called "exposure." Sometimes with those -- obsessive compulsive disorder, it's called "exposure and response prevention." But it's a graduated attempt to decondition whatever the things is that's a particularly strong stimulus.

Q. Is group therapy a form of exposure?

A. No. I mean, it could be for somebody with social anxiety. It's not generally used that way, no.

Q. Okay. But for someone with social anxiety, which is what Dr. Menninger had, it could be, correct?

A. It might be. Again, I have not seen it used that way, so --

Q. Okay. Do you know whether Dr. Menninger had done group therapy at this point?

A. I don't know.

Q. Do you know whether she ever did?

A. I believe she was in group programs when she was at Butler.

Q. Has she done it since she left Butler?

A. I don't know. I've not seen it in any of the records.

Q. Do you know whether it helped her at Butler?

A. You know, again, hard to know exactly what helped at Butler. She certainly had some benefit from being in a structured environment, which is typically what happens for most people when they're -- when they're pretty suicidal or --

Q. Did you review the Butler health records?

A. Yes, I did.

Q. And so you don't recall, though, whether it said that the groom therapy was helpful to her?

A. Not per se. I don't think it was broken out way.
Q. Okay. So on the next page, under "safety," it says "denies suicidal ideation"?
A. Uh-huh, yep.
Q. Do you see that? So no suicidal ideation on May 25, 2018?
A. Yep.
Q. Again, this is after --
A. Yep.
Q. -- the internal investigation came back negative, right?
And, again, under "diagnosis," no -- still no diagnosis of major depressive disorder --
A. Yeah.
Q. -- correct?
So this is the note for June 1, 2018. Do you see that?
A. Yep.
Q. So it seems like her mental health condition has declined pretty drastically since May 25th.
A. Yes.
Q. She didn't have any suicidal ideation on May 25th? We just saw that, right?
A. Yes.
Q. And now she's got passive suicidal ideation --
A. Yep.

Q. -- no intents or plan.

And she was feeling good about asserting herself on May 25th. We just saw that, right?

A. Yes.

Q. So do you know what, if anything, happened between May 25th and June 1st that caused this?

A. You know, I don't recall exactly. I mean, I -- I wouldn't want to guess. You know, there are so many records I've reviewed, but I would -- I think that there was some further discussion about an exit plan, but I don't -- I'd have to go back and look at the records specifically.

Q. You think there was a discussion and exit plan after May --

A. I don't recall exactly, so I'm not going to guess.

Q. Okay.

A. I don't -- I can't, as I'm sitting here, without reviewing the records, tell you exactly what happened in that period. But she clearly got worse at that period.

Q. Okay. Anything else that happened after May 25th and before June 1st?

A. Not that I'm aware of.

Q. Okay. And have you seen anything to indicate that PPD threatened to fire her or take any other action against her during that period?

A. I'd have to look back at the records. Not that I recall.

Q. Okay. All right. So she's in pretty bad shape on June 1st, but the diagnosis still -- there's no diagnosis of major depressive disorder by Dr. Kessimian, correct?

A. Yeah.

Q. June 8th, she's on medical leave at this point, right?

A. Right.

Q. And if you look under "history of present illness," the last phrase there says, "Suicidal ideation has resolved." Do you see that?

A. Yep.

Q. It says she's eating okay?

A. Uh-huh.

Q. Do you see that?

A. Yep.

Q. Okay. And then down below, under "safety," again, it says "Denies suicidal ideation, no intents or plan"?

A. Right. But it also says, higher up, "Continues to find it hard to feel hope. Feels apathetic, worthless, and despondent."

Q. Right. But no suicidal ideation?

A. Not that she reports there, no.

Q. And she's eating okay?

A. Yeah.

Q. Okay. Do you have any reason to believe that she reported it to Dr. Kessimian but Dr. Kessimian didn't --

A. No, absolutely not.
Q. Do you have any reason to believe that she had suicidal ideation --
A. No.
Q. -- but didn't report it?
A. No. I trust Dr. Kessimian's notes.
Q. And, again, under "diagnosis," no diagnosis of major depressive disorder?
A. Yep.
Q. So I think you testified before that you thought that, in early June of 2018, she went to Butler Hospital?
A. Yes.
Q. All right. So this is the note for June 29th. Under "history of past illness," it says, "Since last visit, is on medical leave. Plans to start the partial program on Monday."
A. Late June. Yeah.
Q. Okay. So it was late June, not early June?
A. Yeah.
Q. All right. It says, "She is sleeping slightly better but still anxious." But she's sleeping better, right --
A. Yep.
Q. -- according to this note? She's also eating okay. Do you see that?
A. Yep.

Q. "Suicidal ideation has returned, denies intent or plans." So suicidal ideation is back now. Do you see that?

A. I see that under "safety" where it says "denies suicidal ideation."

Q. Right. So it seems unclear here whether she has suicidal ideation or not, right?

A. Point to me the -- yes, suicidal ideation -- so it sounds like there's a conflict between the first -- the history of the present illness and the safety --

Q. Right.

A. Right.

Q. So it's, at best, unclear whether she had suicidal --

A. -- yeah.

Q. -- ideation at this point?

And, again, under "diagnosis," the bottom of this page and over on to the next page, nothing about major depressive disorder?

A. Mmm.

Q. All right. So this is a note for July 13, 2018. "Since last visit, completed the partial program at Butler. She had severe panic symptoms and a panic attack in group when she was expected to report on her weekend. As her turn approached, she became tearful, started to hyperventilate, and left the group" --

THE COURT REPORTER: I'm sorry; if you could read

that --

MR. CURRAN: Sorry.

BY MR. CURRAN:

Q. -- "tearful, started to hyperventilate, and left the group and was helped by her therapist in the program. She was able to return to the program and found existential therapy as well as group therapy challenging and rewarding."

Do you see that?

A. Yes.

Q. Okay. So it seems like the group therapy was helpful, at least according to this note, right?

A. I'm sorry; I couldn't hear what you said.

Q. It seems like the group therapy was helpful, at least according to this note?

A. Yeah, helpful but also stressful.

Q. Okay. Well, it's supposed to be stressful, right, for someone with anxiety?

A. It depends.

Q. It depends on what?

A. It depends on what your therapeutic goals are.

Q. What are the therapeutic goals -- what do you think the therapeutic goals were at this point? Or what --

A. Well, I think the first therapeutic goal is to help her feel comforted, secure, that people are listening to her, that they're making sure that they understand what going on

with her, and that they're laying out a set of interventions and treatments that are helpful.

You don't want to necessarily acutely make somebody feel worse. That may happen over the course of therapy, but one needs to approach that very gingerly. Just like if you're a surgeon, you don't want somebody mashing on a hot abdomen, you know, without going -- causing pain. If there's pain, you want to come to it, but you want to come to it very gently.

Q. So you disagree with the Butler Hospital psychiatrists who had her do group therapy?

A. You know, again, I'm not -- I'm not saying I disagree or agree. It's -- I'm just saying that a priority -- having somebody panic in a group is not the kind of graduated approach that I would want to see toward somebody with an anxiety disorder like this.

Q. Okay. She found it rewarded, though, correct?

A. That's what it says.

Q. Right. And under "safety" down below, it says "denies suicidal ideations" --

A. Yep.

Q. -- "no intents or plans"?

And at the bottom of the next page, the diagnosis, up to the next page, still nothing about major depressive disorder?

A. Yep.
Q. So we could keep going through these. I'm not going to take everybody's time doing that. But, again, you don't -- as you're sitting here today, you don't recall seeing any -- any diagnosis by Dr. Kessimian of major depressive disorder?
A. I don't recall at the moment, no.
Q. Okay. And Dr. Kessimian was the medical doctor who was caring for Dr. Menninger in 2018?
A. Yes.
Q. And you didn't see her until a couple years later?
A. That's correct.
Q. All right. Now, in 2017, Dr. Menninger was living in the Cincinnati area; is that correct?
A. That's my understanding.
Q. And she'd been living there since 2015?
A. That's my understanding.
Q. All right. And is it your understanding that, in 2017, she moved to Massachusetts?
A. Yes.
Q. And then, within a year or two after that, she moved to Albuquerque, New Mexico; is that right?
A. That's my understanding.
Q. And then a year or two later, she moved again to Oregon --
A. Yes.

Q. -- is that right?

So in forming your opinion in this case, did you consider whether or to what extent all these moves could have caused or contributed to Dr. Menninger's worsening health condition?

A. I certainly didn't think that it was primary or even -- I think they were more reactions to circumstances that she was in rather than a causal factor.

Q. So they were motivated by responses to things, right?

A. Well, I think she was -- was trying to find a set of circumstances that she felt more comfortable in and ultimately closer to family in Oregon.

Q. Well, the move to Massachusetts wasn't to be closer to family, right?

A. I think that was for schooling-related issues for her child.

Q. And the move to New Mexico wasn't for family, right?

A. I don't believe there was family in New Mexico.

Q. Okay. And putting aside the motivation for the moves, could the effect of the moves have been isolating and caused her conditions to worsen?

A. I think it's unlikely.

Q. Why is that?

A. These conditions are -- have to some degree -- you know, she's already had many of these symptoms over a long period

of time in her life. And she wasn't particularly going out and doing a lot of social things to start with, either in -- when she was in -- when she was in Massachusetts.

So I don't see that as being a primary concern. I think she was very concerned about her finances and her support of her family and work. I think those things were very substantial to her, and I think she was pretty worried about her -- her -- keeping her family stable.

Q. Did you ask her whether she had a social network or a group of friends in Cincinnati?

A. We didn't -- we didn't discuss that.

Q. Did you ask her whether she had a social network or group of friends in Massachusetts?

A. No. We, again, focused primarily on her historic symptoms and the work situation.

Q. So you don't know as you're sitting here today whether she had those things --

A. I don't have great detail on that.

Q. All right. So then in March 2020, of course, we have the beginning of the COVID-19 pandemic, right?

A. Yes, we did.

Q. And that continued for a few years and, officially, I guess is still going on, right?

A. Not for long, I gather.

Q. Yeah, we've still got a couple weeks, I guess.

So in forming your opinion about the causes of Dr. Menninger's conditions, did you consider whether or the extent to which the pandemic could have caused or contributed to her conditions?

A. You know, I think the pandemic hasn't been good for most people's conditions, but I don't see that, again, as primary here. I think this has been much more focused around the change in her work environment and work circumstances.

Q. Could it have been made it worse than it otherwise would have been?

A. The COVID-19 pandemic has made very little better for anybody.

Q. And did you consider that in forming your opinion as to what the cause was?

A. Yeah. I didn't think it was a major factor.

Q. Okay.

A. She was already, as you noted, isolating quite a bit, so --

Q. So your -- in your director testimony, you referred to post-traumatic stress disorder, correct?

A. Yes, that I didn't think she had a diagnosis of post-traumatic stress disorder.

Q. Okay. But you think that she has some symptoms?

A. Oh, yeah, she definitely has some symptoms.

Q. All right. But in order to make a diagnosis of PTSD, you

would have to experience exposure or actual -- to actual or threatened death or serious injury?

A. Yeah. That's the category A criteria.

Q. All right. Now, we saw before that in Dr. Kessimian's records Dr. Menninger when she was a child, she witnessed domestic violence, including seeing her father hold a knife to her mother's throat?

A. (Nods head.)

Q. Would that qualify as an exposure to actual or threatened death or serious injury for purposes of --

A. You know, it certainly is a traumatic exposure and -- however, the period of time between that and the onset of her symptoms is of such longer duration it's hard to attribute it to that.

Secondly, her other symptoms that she had, particularly in her dreams and some of the other symptoms I mentioned, are much more related to work. So I don't think that helped her well-being seeing that. I think that that's pretty stressful. But I don't think it puts the whole -- the whole picture together.

Q. All right. Now, you testified that Dr. Menninger is currently unable to work; is that right?

A. Yes.

Q. And you also testified that, in your opinion, there's a significant risk that Dr. Menninger may be unable to work for

the rest of her expected work life?
A. That's true.
Q. When you say she's unable to work, in what type of job is she currently unable to work?
A. I don't think that she'd be able to -- be able to work in most jobs, not being able to leave the house and not being able to maintain a career that she's been trained for.
Q. So she wouldn't be able to work in most jobs, or she wouldn't be able to work in the career she's trained in?
A. Well, she certainly can't work at present in the work that she's been trained to do in her career.
Q. Can she work at all, though?
A. I don't think that she's -- I think that the level of her anxiety, preoccupation, agoraphobia, other traumatic symptoms, mood disturbance, all militate against her being able to work currently.
Q. Did you consider any other jobs besides the one that she's been trained for or the one that she had at PPD that she might be able to perform?
A. You know, I'm not sure it's for me to make, you know, vocational choices for anybody else, so --
Q. Well, you're opining that she can't work, so presumably --
A. Yeah, I don't think that she can work anywhere near the -- she can't get anywhere near, I think, the ability --

the things that she was trained to do.
Q. All right. But in any case, you can't say with certainty that Dr. Menninger definitely won't be able to work again, whether --
A. No, and I've never said that.
Q. Okay. So, in your opinion, it's possible she may recover or that her conditions may improve in the future to the point --
A. I would hope so, but I can't say that for any degree of certainty.
Q. But it's possible?
A. It is possible.
MR. CURRAN: I don't have any further questions at this time.
THE COURT: All right. Any redirect?
MR. HANNON: Yes, Your Honor.
May I proceed?
THE COURT: Yes.
REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF
BY MR. HANNON:
Q. Dr. Summergrad, you were asked a number of questions on cross-examination about possible causes of Dr. Menninger's deteriorating health. Do you recall those questions?
A. Yes, I do.
Q. What if any significance does the content of

Dr. Menninger's dreams have in trying to pinpoint what it is that has caused her to be in the state that she is in?

A. Well, again, it's -- they're very transparent. They're not terribly disguised. She's at work. She's in a work situation. She's interacting with leadership from her work. She feels that she has to hide, that she feels she's under physical and other threat and that she's going to be reported to, among other people, Vladimir Putin, which doesn't exactly sound encouraging.

Q. Fair to say that President Putin did not charge her -- cause her decreased health?

A. Not -- I doubt it.

Q. You were also asked about your diagnosis of major depressive disorder.

A. Yeah.

Q. And in connection with that, I'd like to draw your attention to Joint Exhibit 25. So I'm showing you here the fourth page of Joint Exhibit 25, and -- I'm not showing you anything because I haven't pressed the button.

I'm now showing you the first -- the fourth page of Joint Exhibit 25. And if you look here at the top, these appear to be records from Butler Hospital?

A. Yep.

Q. And you see it reflects the treatment that she received there in early July of 2018?

A. Correct.
Q. All right. And if we look down here at the bottom, you see here now she now has a diagnosis of major depressive disorder. Do you see that?
A. Yeah.
Q. Okay.
A. I agree with that.
Q. You were asked some questions on cross-examination about Dr. Menninger's suicidal ideation. Does a person with major depressive disorder have to think about killing themselves every single day?
A. No.
Q. Is it common for a person suffering from major depressive disorder with suicidal ideation for those -- for those thoughts to come and go over time?
A. Yes.
Q. Does -- does a person with major depressive disorder, do they occasionally have okay days?
A. Yes.
Q. The various notes that you looked at reflecting occasionally upticks in Dr. Menninger's mental health, is that reflective to you that she wasn't developing major depressive disorder?
A. No.
Q. Is that reflective to you that she was obtaining proper

medical care?
A. Yes.
Q. Is that reflective to you she was doing everything she could to try to get better?
A. Yes.
Q. And, in fact, Doctor, prior to PPD denying Dr. Menninger's requests for accommodations, she was showing some improvement; is that right?
A. Yes.
Q. And let's take a look at that document that Attorney Curran noted I could talk to you about on my examination. So I'm going to show you here Joint Exhibit Number 18, and I'm going to show you the page that has 671 in the bottom right-hand corner.
A. Yep.
Q. Okay. And you see here that on February 16, 2018, Dr. Menninger was reflecting some improvement; is that right?
A. Yes.
Q. Okay. And is that -- is that consistent with your overall opinion in this case?
A. Yes, and the note where it says, in the history of the present illness, she was able to speak to both HR and her boss regarding the document for accommodations; their response was promising.
Q. And if we flip ahead here to the -- to the next entry, so

March 9, 2018 --
A. Yeah.
Q. -- so this would be after Dr. Menninger's meeting with HR and her boss, right?
A. Yes, on 2/28.
Q. Okay. And she notes that the -- the panic symptoms are continuing?
A. Yeah.
Q. Okay. And if you look at the plan from that treatment, you'll see here that Dr. Kessimian made the decision to put her homework on pause.
A. Yep.
Q. Do you see that?
A. Yep.
Q. And she notes that she's putting it on pause because of the level of stress over the past week; is that right?
A. Yep.
Q. Now, if we look at the next entry here, Dr. Menninger is showing that this week has been hard, especially after the email from Chad. Do you see that?
A. Yes, I do.
Q. Okay. When a person like Dr. Menninger, with her mental impairment, when they encounter some kind of event or trigger, so to speak, does that necessarily impact them right away, or might that kick in upon further reflection?

A. It could be -- it could impact them right away. It could take some time to metabolize or even, you know, get perspective on what's going on for them.

Q. And --

A. Not all of us figure out every stressor instantaneously when it happens.

Q. And if I could direct your attention here to the page on the exhibit that ends 683, so this was the note from March 30, 2018. Do you see that?

A. Uh-huh.

Q. And so this is the note --

A. Yep.

Q. -- where she notes that it's -- that she's felt worse than she has ever -- has before, and now has doubts about her decision.

A. Yep.

Q. Do you see that?

A. Yes, I do.

Q. Is -- is that consistent with the opinions that you've given the jury today concerning the --

A. Yes.

Q. -- causation?

A. Yes.

Q. And can you -- can you explain why this -- this self-doubt --

A. So, again, to go back to, you know, the core concern, which is being seen, exposed, humiliated as a core worry within -- within social anxiety, she exposed herself and then felt like she was basically getting a message about exit, consultation, et cetera.

So she's having -- she's having doubts about whether she did the right thing and feels -- feels vulnerable, feels things have changed and feels that -- and she doubts that maybe she shouldn't have exposed herself in this way.

Q. Do those -- do those expressions of self-doubt, does that reflect to you that it actually was Dr. Menninger's fault?

A. No. It reflects the kind of self-doubt, the negative kind of ideation and thoughts that occur both in the setting of social anxiety or the development of an incipient major depressive disorder, which is, again, I think part of what was developing over the later spring.

Q. I'm now going to direct you to the treating note that ends in 695. So you -- here, this is from 4/27/18.

A. Yeah.

Q. Do you see that?

A. Yeah.

Q. And would this be one of the lower low points that Dr. Menninger encountered up to this point?

A. Yes.

Q. Okay. And if you look at the bottom, when she talks about -- Dr. Kessimian's note at the end, it includes that Dr. Menninger had a sense that she "cannot trust anyone, and they are scanning her for fault at all times."

Do you see that?

A. Yes.

Q. Okay. And you see that was -- that was a reference to her work life?

A. Yes.

Q. And is that consistent with the information that you learned in your examination of Dr. Menninger that she was feeling as though she was being targeted and rejected by her employer?

A. Yes.

MR. HANNON: That's all I have, Your Honor.

THE COURT: All right. Any redirect -- recross?

MR. CURRAN: Just a little bit, Your Honor.

RECROSS-EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. CURRAN:

Q. All right. Hello again, Dr. Summergrad.

A. Hi. How are you, sir?

Q. Better.

A. Good.

Q. So Attorney Hannon had asked you some questions about the dreams that Dr. Menninger's had?

A. Mmm.
Q. And you mentioned that one of them features President Putin?
A. Mmm.
Q. That, obviously, has nothing to do with PPD, I assume, correct?
A. Not that I'm aware of.
Q. Okay. And --
A. But it does -- it does show her level of fear and threat.
Q. Right. What does it suggest about what she's fearing?
A. She's fearing danger. I mean, she's worried that she's -- you know, the dreams are she's at work. She mentions the director. She fears that she feels she has to run and hide because she's afraid she's going to be hurt in some way.
Q. Okay. Now, you're aware, obviously, that about a year ago, Russia invaded Ukraine, correct?
A. Yes.
Q. So there's been a lot of talk in the news about Putin and the state of the world and how it's causing danger in the world?
A. Right. I believe these predate that discussion -- that invasion.
Q. When did these dreams occur?
A. Well, I think she -- as I recall, she reported them to me

in my first interview with her.
Q. Did you note them in your first interview with --
A. Mmm.
Q. You noted that she had dreams about Vladimir Putin?
A. Mmm.
Q. Could you take a look at your book, the first tab there?
THE COURT: Which page?
BY MR. CURRAN:
Q. Can you show me where in the report you talk about her having dreams about Vladimir Putin?
A. I don't think I mentioned it in the report.
Q. You didn't mention it in the report?
A. No, I don't believe so.
Q. Maybe I heard you wrong, but I thought you just testified that you did put it in your report?
A. I'm sorry?
Q. I may have heard you wrong, but I thought you testified that you did put it in your report?
A. No, I didn't say I put it in my report.
Q. What did you say?
A. I said that she reported the dreams to me in my interview with her.
Q. But you didn't put that in your report?
A. No, I did not.
Q. All right. So Mr. Hannon was asking you about some

questions about this treatment note from March 30, 2018?
A. Mmm.
Q. Do you recall that? And he was pointing you to the part right after the blocked out -- blacked out portion there where it says "though is sad/frustrated that since 'coming out' with her social anxiety disorder, she has felt worse than she has ever have before and now has doubts about her decision."
Do you see that?
A. Yes, I do.
Q. And I think you testified in response to Mr. Hannon's questions that this has something to do with the way that she was -- the way that PPD reacted to her disclosing her disability? Did you say that?
A. Yes.
Q. And what's the basis for that?
A. That she felt that people around her had changed in their behavior, that she felt that she wasn't -- she felt that she was being distanced and not --
Q. Nothing about that in this note, correct?
A. No, there's nothing about that in this note.
Q. And the note just talks about her feeling this way because she had come out with her disability, correct?
A. Correct.
Q. Was it possible that she felt this way just because she

came out with disability and exposed herself?
A. It's certainly -- it's certainly likely that that's a part of what she -- again, social anxiety is associated with fear of exposure, fear of being seen.
Q. And so to say that it's based on the way people reacted to it would be speculating based on this note, correct?
A. Based on this note, it would be but there is other data.
Q. Mr. Hannon was asking you some questions about -- or he pointed you to some notes in February and early March where someone -- early February, the notes suggested she was doing better; and then in early March and later in March, there were notes suggesting that she was doing worse. Do you recall that?
A. Mmm.
THE COURT: You have to say yes or no.
THE WITNESS: Yes. I'm sorry. Yes. Sorry.
BY MR. CURRAN:
Q. So when you and I were talking, we took a look at this note, which is the second April 13th note.
A. Yes.
Q. And so it appears like this is when she's doing better, correct?
A. Correct.
Q. She's feeling a sense of empowerment?
A. Yeah.

Q. So fair to say she's improved since the March notes that you were looking at?
A. Yeah, this fluctuates.
Q. Okay. Now, I think you mentioned on direct that -- well, that you were leaving Tufts's chairmanship in June?
A. That's correct.
Q. Do you know why that is?
A. Yes.

MR. HANNON: Objection. Beyond the scope.

THE COURT: Sustained.

MR. CURRAN: That's all the questions I have, Your Honor.

THE COURT: All right. Thank you very much. You're excused.

THE WITNESS: Thank you.

THE COURT: Do you have another witness?

MR. HANNON: The next would be a read-on, which would take probably a couple minutes to set up.

THE COURT: All right. I'll let him off the hook, and we'll leave a minute early.

So don't discuss the case among yourselves. Don't discuss it with anyone else. Don't do any independent research. A reminder -- tomorrow, 9:00 to 10:00 and again 2:00 to 4:00.

Thank you very much for your attention. Have a

nice day.

All rise for the jury.

(Jury not present.)

THE COURT: What's next?

MR. HANNON: We have to do the read-on. We're probably going to save that for later, but we'll jump into the PPD folks that are here tomorrow. We'll knock them out. If we have any extra time, we'll move on to the read on.

THE COURT: All right. Anything else?

MS. MANDEL: Not from our end.

THE COURT: Okay. See you tomorrow morning at 8:45 unless you send me things to review tonight.

Sounds good.

MR. HANNON: Thank you.

THE COURT: Thank you.

(Court in recess at 4:00 p.m.)

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Rachel M. Lopez — March 27, 2023

/s/ Robert W. Paschal

_____ _____

Rachel M. Lopez, CRR — Date

Robert W. Paschal, CRR, RMR

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